

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 394 OF 2017
WITH
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Kushala Ramesh Shetty	..	Petitioner
vs.		
Kamal Pasha Zaidi & Anr.	..	Respondents

Mr. Rajesh Khobragade for Petitioner.
Mr. D. Merchant - Senior Advocate with Dalla i/b. Dalla & Associates
for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 08 SEPTEMBER 2017

P.C :

1] Rule in all the petitions. Rule is made returnable forthwith with the consent of and at the request of the learned counsel for the respondent No. 1.

2] The presence of respondent No. 2 is not at all necessary for deciding this petition.

3] The petitioner (tenant) questions determination of reasonable compensation at the rate of Rs.1,50,000/- per month in the impugned orders dated 19th October, 2016 (passed in three appeals instituted by the petitioner) by which, the appeal Court, has granted conditional interim relief to the petitioner.

4] Mr. Khobragade, learned counsel for the petitioner submits that the appeal Court has mistakenly assumed the area of the suit premises at 945 sq. ft. when in fact, the actual area of the suit premises is not exceeding 650 sq. ft. He however submits that the petitioner in the present case is a widow and the payment capacity of the petitioner has not at all been adverted to by the appeal Court in determining the compensation. Mr. Khobragade submits that compensation, in terms of the decision of the Hon'ble Supreme Court in **Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.**¹ is required to be reasonable and further, even the payment capacity of the tenant has to be taken into consideration. He submits without prejudice that in the facts of the present case, the reasonable compensation amount should not to exceed Rs.90,000/- in all the three petitions.

5] Mr. Merchant, learned counsel for the respondent No. 1 submits that the suit premises admeasure 945 sq. ft. and further even according to the valuation report produced on record by the petitioner, the suit premises are located in a very busy commercial area i.e. Mahalaxmi (Worli). Mr. Merchant submits that the petitioner is running a bar and restaurant through the suit premises and pictures of the suit premises would indicate that no less than 15

1 (2005) 1 SCC 705

air conditioners have been put up in the bar and restaurant. He submits that there is neither any jurisdictional error nor any perversity in the determination of compensation and therefore, this Court should dismiss these petitions.

6] There is some dispute with regard to the actual area of the suit premises. According to the learned counsel for the petitioner the area is 2/3rd of what is stated by the landlords to be the true and correct area. For the present, even if this aspect is *prima facie* held in favour of the landlords, Mr. Khobragade is right that some consideration was necessary on the aspect of payment capacity. Learned counsel for the petitioner submits that earlier it is the petitioner's husband who was operating the restaurant and upon his demise, the petitioner has stepped in. He submits that there are difficulties for her in running the business of such a nature, however, since, this is her source of livelihood, she continues to run the business to the best of her ability. Taking this aspect into consideration and also taking into consideration that there is some dispute with regard to precise area of the suit premises, it will be appropriate if the reasonable compensation is determined at the rate of Rs.1,25,000/- per month instead of Rs.1,50,000/- per month in respect of the entire premises i.e. three shops.

7] The impugned orders in all these petitions are modified to the aforesaid extent only.

8] Rule is made partly absolute to the aforesaid extent only. In the facts and circumstances of the present case, there shall be no order as to costs.

9] Further, it is made clear that in case of any two consecutive defaults or three non consecutive defaults, the interim order granted by the appeal Court shall stand vacated without any further reference to the appeal Court.

(M. S. SONAK, J.)

Chandka