

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1730 OF 2016
IN
FIRST APPEAL NO.1134 OF 2008**

Mahendra Jadavji Vora ... Applicant

In the matter between :

Hosang Rusi Nallaseth ... Appellant

Versus

Minoo Pestonji Polson And Others ... Respondents

.....

Mr. Rajesh Patil for the Applicant.

Mr. Clive D'Souza for the Respondent/Original Appellant.

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CORAM : S.C. GUPTE, J.

DATE : 24 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2 The civil application seeks enhancement of compensation fixed by the Court in its order dated 25 August 2008, as a condition for stay of execution of a decree of possession granted by the Trial Court in favour of the Respondent herein (original Appellant in the First Appeal). The Respondents were the Plaintiffs before the Court in a trespass suit against the Appellant herein. The suit was decreed and there was a decree for possession in favour of the Respondents, holding the Appellant (original Defendant No.1) to be a trespasser in respect of the suit premises. When

the First Appeal came up for admission on 25 August 2008, after some discussion at the bar, it was agreed between learned Counsel for both parties that the execution of the decree for possession shall be stayed pending the hearing of the First Appeal, subject to the Appellant depositing a sum of Rs.6,000/- per month. About nine years have since passed after the passing of that order. The Respondents to the First Appeal have moved the present civil application for enhancement of compensation commensurate with today's market rates. It is submitted that comparable premises in the same building fetch licence fees of about Rs.45,000/- per month with Rs.2,00,000/- as interest free deposit. A copy of the registered leave and licence agreement for such comparable premises is filed alongwith the civil application.

3 This Court made it clear to learned Counsel for the Respondent (original Appellant in the First Appeal) that a suitable compensation commensurate with today's rates will have to be paid as a condition for continuation of stay of decree for possession. After some discussion in Court, learned Counsel left it to the Court to decide the compensation. This Court is of the view that in the facts and circumstances of the case, compensation of Rs.25,000/- (Rs. Twenty Five Thousand only) per month would be a fair and adequate compensation.

4 The civil application is, accordingly, disposed of, directing the Respondent (original Appellant in the First Appeal) to deposit a sum of Rs.25,000/- per month instead of Rs.6,000/- per month mentioned in the order dated 25 August 2008, with effect from May 2017. Save and except this revision, the order dated 28 August 2008, shall continue to operate

pending the hearing and final disposal of the First Appeal.

(S.C. GUPTE, J.)