

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2056 OF 2016
IN
WRIT PETITION NO.5977 OF 2004

Soman Manas Joseph : Petitioner/(Orig.Defendant)
versus
Allan Sebastian D'souza : Applicant/Respondent
(Orig. Plaintiff)

Mr. Periera a/w Ms Leena Mirasee for the Applicant.
Mr. A S Khandeparkar a/w Mr. Rajdeep Gude and Mr. Amogh Karandikar
i/by Khandeparkar & Associates for the original Petitioner/Defendant.

CORAM : R. M. SAVANT, J.
DATE : 13th APRIL 2017

P.C.

1 The above Civil Application has been filed for directions that pending the hearing and final disposal of the above Writ Petition, the original Petitioner i.e. the Respondent herein be directed to pay compensation @ Rs.7,000/- per month from the date of decree i.e. 03/02/2001 till the possession is delivered to the Applicant herein i.e. the original Respondent to the Writ Petition. The Applicant herein is therefore fixed for fixation of interim compensation pending the above Writ Petition for which reliance is placed on the judgment of the Apex Court reported in (2005) 1 SCC 705 in the matter of Atma Ram Properties (P) Ltd V/s. Federal Motors (P) Ltd. In support of the said claim Leave and License Agreement dated 16/12/2013 is sought to be relied upon in which Leave and License Agreement the license fees have been

mentioned as Rs.10000/- for the use of premises admeasuring 374 sq.ft. in the vicinity of the suit premises for office purposes. It is required to be noted that the above Writ Petition came to be admitted by a learned Single Judge of this Court on 29/07/2004 and the above Civil Application has been filed seeking the reliefs which have been adverted to herein above on 11/12/2013 was served on the other side in December 2013 but was numbered only in the year 2016.

2 Now coming to the suit premises, it is the contention of the Applicant herein i.e. the original landlord that the suit premises admeasure 280 sq.ft. whereas it is the contention of the Respondent herein i.e. the original tenant that the suit premises admeasure 180 sq.ft. i.e. 10 ft. x 18 ft. An affidavit in reply has been filed on behalf of the Respondent herein i.e. the original Petitioner to the Writ Petition to which photographs of the structure have been annexed. The photographs disclose that the structure is a ground floor structure with asbestos sheets on top. It is the case of the Respondent herein i.e. the original Petitioner that the water supply to the premises has been disconnected and that the Respondent herein i.e. the original Petitioner had to get installed the electricity supply at his own costs. The premises are situated in Kanjur village and there is a contentious issue as to whether the area in which the premises are situated is a slum or not. It is not necessary for this Court to express any opinion on the said aspect since the above Writ

Petition is pending.

3 However, having regard to the aforesaid facts, in my view, the document on which the reliance is sought to be placed on behalf of the Applicant herein i.e. the Leave and License Agreement dated 16/12/2013 cannot aid this Court in coming to the conclusion as regards the interim compensation that is required to be fixed as the said agreement is in respect of the larger area and the user is also for office purpose. Considering the photographs on record which depict the nature of the structure i.e. the suit premises in my view, it would be just and proper to direct the Respondent herein i.e. the original Petitioner to the Writ Petition to pay interim compensation at the rate of Rs.2000/- per month. The said compensation would be payable from May 2017 onwards to be paid on or before 10th of each month. Out of the said amount of Rs.2000/- which is directed to be paid by the Respondent herein i.e. the original Petitioner to the Writ Petition, the Applicant herein i.e. the original Respondent to the Writ Petition would be entitled to withdraw a sum of Rs.1000/- per month. The amount of Rs.7000/- which is deposited by the original Petitioner to the Writ Petition pursuant to the order dated 09/12/2016 would be adjusted towards the payment of May 2017, June 2017, July 2017 and Part payment of August 2017. The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]