

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1615 OF 2018

Mr. Pestonji Fardunji Damkevala (since Decd.)

Through LR's.

...Petitioners

Versus

Jami Lodge Co-op.Hsg.Society

...Respondent

Mr.Rustom M.Pardiwalla i/b. K.S.Irani, for the Petitioners.Mrs.Ferzana Behram Kamdin with Ms.Bharti Bhansali i/b. FZB &
Associates, for the Respondent.

CORAM : G.S.KULKARNI, J.***DATE : 13 February 2018*****P.C. :**

1. Heard learned Counsel for the parties. The challenge in this petition is to the order dated 26 October 2017 passed by the Appellate Bench of the Small Causes Court at Bombay whereby the petitioner sought stay to the effect and operation of the judgment and order dated 23 March 2017 passed in R.A.E. Suit No.1707 of 1995 till the final disposal of the appeal, which has been granted subject to the condition of the petitioner depositing compensation at an amount of Rs.15,000/- per month from the date of decree i.e. 23 March 2017 till the date of the said order, to be deposited within a period of two months from the date of the said order. The operative portion of the order reads thus:-

“The application is allowed as under:

(a) The operation and execution of the impugned judgment and decree dated 23.03.2017 in RAE Suit No.1706 of 1995 passed by Small Causes Court (Court Room No.11) Mumbai, is hereby stayed till final hearing and disposal of this appeal on following conditions:

(i) The applicants shall deposit compensation amount at the rate of Rs.15,000/- (Rupees Fifteen thousand only) per month from the date of decree i.e. 23.03.2017 till date, within the period of two months from the date of this order.

(ii) The applicants shall go on depositing further monthly interim compensation at the rate of Rs.15,000/- per month (Rupees Fifteen Thousand only) on or before 15th day of each month till final disposal of this appeal.

(iii) The applicants is directed not to part with possession of suit premises and not to create third party interest in the suit premises during the pendency of appeal.

(b) The application is disposed of accordingly.”

2. Learned Counsel for the petitioners in assailing the impugned order would contend that the premises in question is a garage admeasuring 242 sq.meters. It is submitted that it is not a residential property nor a commercial property. It is only used for the purpose of storage and the petitioners are storing some household articles. It is submitted that an amount of Rs.15,000/- per month as fixed by the impugned order is unreasonable and harsh considering the nature of the premises.

3. On the other hand learned Counsel for the respondent submits that the Municipal Corporation has already granted permission

to use the garage for storage purpose. My attention has been drawn to the valuation of the suit premises as also placed on record before the Appellate Bench of the Small Causes Court, where according to the respondent, the compensation works out to the tune of Rs.57,012/- per month. It is submitted that considering the decision of the Supreme Court in “*Atma Ram Properties (P) Ltd. Vs. M/s.Federal Motors Pvt.Ltd.*”¹, the compensation which has been fixed by the Appellate Bench is reasonable and appropriate. It is also submitted that the petitioners have stored some junk material which is caused unhygienic condition, nuisance and inconvenience to the members of the society.

3. Having heard the learned Counsel for the parties and having considered the background of the litigation and the impugned order passed by the appellate Bench of Small Causes Court, in my opinion, interest of justice would be served if the amount of compensation of Rs.15,000/- per month is reduced. This for the reason that it is an admitted position that the premises are used only for the purpose of storage of household articles. It is not the case of the respondent-society that the suit premises were used for any other purpose. Moreover, it is the case of the respondent-society that the manner in which it is used for storage of household articles, is causing nuisance. Thus, considering the overall situation and that the amount

¹ (2005)1 SCC 705

needs to be reasonable, it would be in the interest of justice that the amount of compensation which is required to be paid by the respondent as a condition of stay of the eviction decree passed against the petitioner, shall be Rs.7500/- per month. A perusal of the impugned order and more particularly the reasons as set out in paragraphs 15 and 16, in my opinion, are not justifiable reasons to award compensation at the rate of Rs.15,000/- per month, considering the nature of the premises. Admittedly, the amount of compensation cannot be unreasonable. The impugned order, therefore, is required to be modified to the above extent. The petition is accordingly disposed of in the above terms:-

ORDER

(i) The order dated 26 October 2017 passed by the Appellate Bench of the Small Causes Court is modified to the extent that the petitioners is directed to pay Rs.7500/- per month as interim compensation till the disposal of the appeal.

(ii) Except for the change of the amount, all other directions as contained in the order dated 26 October 2017 shall remain unmodified.

(iii) The petitioners shall place on record of the Appellate Bench, an undertaking that the premises shall be used only for storage and not for any other purpose and that the hygiene in premises shall be maintained and that no nuisance would be caused to the respondent-society or its members.

(iv) An undertaking to that effect be filed within a period of two weeks from today. A copy of the undertaking shall be furnished to

the respondent-society well in advance.

(v) In the event of breach of the undertaking, the respondent is at liberty to approach the appellate bench of the Small Causes Court seeking vacating of the interim order and to seek execution of the decree .

(vi) The amount of arrears of interim compensation shall be deposited by the petitioners before the Appellate Bench of the Small Causes Court within a period of two weeks from today.

4. The petition is accordingly disposed of in the above terms.
No costs.

5. Needless to observe that all contentions of the parties on merits of the appeal are expressly kept open.

6. As the suit itself is of the year 1995 and considering the short controversy involved in the dispute, the appellate bench of the Small Causes Court shall endeavour to take up the hearing of the appeal as expeditiously as possible and preferably decide the same on or before December,2018.

(G.S.KULKARNI, J.)