

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2826 OF 2014

Rajesh Housing Pvt. Ltd. and another.	...Petitioners
<i>Versus</i>	
Mr. Suhas Janardan Chavan and another	...Respondents

....
Mr. Anoop Patil i/b. Bagkar & Co for the Petitioners.
Mr. Arsh Misra i/b. M.V. Kini & Co. for the Respondents.
....

CORAM : R. G. KETKAR, J.

DATE : 13th MARCH, 2018

P.C.

1. Heard Mr.Anoop Patil, learned counsel for the petitioners and Mr.Arsh Mishra, learned counsel for respondents No.1 and 2, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 31.10.2013 passed by the Appellate Bench of the Small Causes Court at Bombay below Exhibit-11 in P.S.C.C. Appeal No.41/2013. By that order, the Appellate Court partly allowed the application made by respondents No.1 and 2 under Order XLI Rule 5 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') and stayed the execution of the judgment and decree dated 15.4.2013 passed by the learned trial Judge in L.E. Suit No.71/84

of 2008 directing respondents No.1 and 2 to deposit amount of Rs.10,000/- per month from the date of the suit i.e. 26.2.2008 on or before 31.10.2013. In case, respondents No.1 and 2 had deposited the amount of Rs.6,260/- per month for that period till 31.10.2013. They were directed to deposit the only difference amount. Respondents No.1 and 2 are further directed to deposit amount of Rs.10,000/- for each English calendar month on or before 15th of next English calendar month till decision of the appeal. The Appellate Court also restrained respondents No.1 and 2 from creating third party interest in regard to the suit premises till the decision of the appeal. The petitioner was permitted to withdraw the amount.

3. Rule. Mr. Mishra waives service on behalf of the respondents. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. Mr. Patil submitted that the suit premises is a shed admeasuring 4000 sq. ft. along with a loft forming part of shop No.20. He submitted that the suit premises is situate at Vikhroli and is a commercial premises. By leave and licence agreement dated 1.10.1998 entered into between the parties, monthly compensation @ Rs.6,000/-

per month is fixed and the respondents No.1 and 2 have deposited interest free security deposit of Rs.34,00,020/-. He submitted that the petitioner had relied upon the instances for arriving at market rent of the suit premises. The petitioners claimed interim compensation @ Rs.1,25,000/- per month which comes to Rs.31.25 per sq. ft. As against this, the Appellate Court had fixed the compensation @ Rs.10,000/- per month which is illusory. The Appellate Court has not considered various aspects, such as, area of the suit premises, user of the suit premises, location of the suit premises, while determining the amount of compensation per month. He, therefore, submitted that the impugned order cannot be sustained.

5. On the other hand, Mr. Mishra supported the impugned order. He submitted that in paragraph-11 the Appellate court has considered the relevant aspects and in particular the fact that respondents No.1 and 2 had deposited interest free security deposit of Rs.30 Lakhs with the petitioners. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. With the assistance of learned Counsel appearing for the parties, I have perused the impugned order. The only reasons that are to be found in the impugned order are in paragraph-11. A perusal of

paragraph-11 does not indicate that the Appellate Court has considered the relevant aspects such as area of the premises, user and location of the suit premises while determining the amount of compensation. The Appellate Court has also not properly applied the decision of Apex court in the case of **Atma Ram Properties (P) Ltd v. Federal Motors (P) Ltd., (2005) 1 SCC 705.**

7. In view thereof, the impugned order is liable to be interfered with. Hence Petition is disposed of with following order:

O R D E R

- (i) The impugned order is set aside. Application Exhibit-11 is restored to the file of the Appellate Court for deciding it afresh.
- (ii) The Appellate court will consider the relevant aspects, such as, area of the suit premises, user of the suit premises, location of the suit premises amongst other things and determine the compensation.
- (iii) The parties are permitted to file additional documents, if they so desire.
- (iv) The Appellate Court is requested to dispose of the application

within two months from the date of receipt of an authenticated copy of this order.

- (v) Rule is made absolute in aforesaid terms with no order as to costs.
- (vi) All concerned parties, including the Appellate Court, to act upon an authenticated copy of this order.
- (vii) Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)