

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5965 OF 2018

Noble Grease Manufacturing Co.

And Anr

...Petitioners

Versus

Badraddin Nazir Ahmed Khan

And Ors

...Respondents

WITH

Writ Petition (St.) No.15319 OF 2018

Badraddin Nazir Ahmed Khan

...Petitioner

Versus

Noble Grease Manufacturing Co.

And others

...Respondents

....

Mr. S.R. Ganbavale a/w. Pallavi Sidhapathaki i/b. Bharat Joshi,
Advocate for the Petitioners in W.P. No.5965/2018 and for the
respondent in W.PST. No.15319/2018.

Mr. H.P. Pandey, Advocate for Respondent No.1 in W.P. No.5965/2018
and for the petitioner in W.PST. No.15319/2018.

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CORAM : R. G. KETKAR, J.

DATE : 05th JUNE, 2018

P.C.

1. Not on board. At the request of Mr. S.R. Ganbavale taken up
for admission. At the request of Mr. H.P. Pandey, W.P. (St.)
No.15319/2018 is also taken up for admission.

2. Heard Mr.S.R. Ganbavale, learned Counsel for the petitioners in W.P. No.5965/2018 & for the respondent in W.PSt. No.15319/2018 and Mr.H.P. Pandey, learned Counsel for respondent No.1 in W.P. No.5965/2018 & for the petitioner in W.PSt. No.15319/2018, at length.

3. Writ Petition No.5965/2018 is instituted by the petitioners, hereinafter referred to as 'defendants No.1 & 2', challenging the judgment and order dated 17.4.2018 passed by the Appellate Bench of the Small Causes Court at Bombay below Exhibit-7 in Appeal No.21/2018. By that order, the Appellate Court allowed the application Exhibit-7 filed by defendants No.1 & 2 and stayed eviction decree dated 7.12.2017 passed by the learned trial Judge in R.A.E. Suit No.1/1 of 2011 subject to defendants No.1 & 2 depositing Rs.50,000/- per month from the date of the decree i.e. from 7.12.2017 as compensation for use and occupation of the suit premises during pendency of the present proceedings. The Appellate Court also issued directions for depositing the arrears of compensation either in lump sum or in three equal monthly installments from 17.4.2018 payable on or before 5th day of each calendar month and for investing the same in Fixed Deposit of one year extendable thereafter on yearly basis till further orders. The Appellate Court also restrained defendants No.1 and 2 from parting with the possession or creating third party interest in the suit premises

during pendency of the appeal.

4. Writ Petition (St.) No.15319/2018 is instituted by respondent No.1, hereinafter referred to as the 'plaintiff', challenging the same order on the ground that as against the claim of Rs.2 Lakhs, the Appellate Court has fixed compensation @ Rs.50,000/- per month.

5. Since both these Petitions raise common questions of law and facts and are also between the same parties, the same can conveniently be disposed of by this common order.

6. In support of W.P. No.5965/2018, Mr. Ganbavale submitted that defendants No.1 & 2 were inducted in the suit premises in the year 1979. The contractual rent is Rs.300/- per month. By the impugned order, the Appellate Court has fixed compensation @ Rs.50,000/- per month which is approximately 160 times than the contractual rent. He submitted that there is no material/evidence adduced by the plaintiff claiming either Rs.1 Lakh or Rs.2 Lakhs per month as and by way of compensation. The plaintiff has relied upon the leave and licence agreement dated 4.12.2017 executed between the plaintiff's son Azharudding Badruddin Khan in favour of one Rajesh Namdeo Sadadekar. He has invited my attention to the said agreement to contend that Azaruddin Khan had given on leave and licence basis an

area admeasuring 3000 sq. ft. approximately on monthly compensation/licence fee of Rs.60,000/- per month. In particular, he invited my attention to the recital of the said leave and licence agreement and also schedule of property mentioned in that agreement. He submitted that said agreement is clearly a camouflage and is executed solely with a view to extracting more compensation from defendants No.1 and 2. He submitted that while fixing the amount of compensation, the Court has to exercise restraint and should not fix any excessive, fanciful or punitive amount. In support of this submission, Mr. Ganbavale relied upon following decisions :

[i] Niyaz Ahmad Khan v. Mahmood Rahmat Ullah Khan and another, (2008) 7 SCC 539, and

[ii] State of Maharashtra and another v. Super Max International Private Limited and others, (2009) 9 SCC 772, and in particular paragraph-77 thereof.

7. Mr. Ganbavale also invited my attention to the valuation report of Prakash Techno-Legal Associates dated 27.1.2018, where the Valuer has estimated the monthly rental value of the suit property in question at Rs.8,000/-. As against Rs.8,000/- as determined by defendants No.1 & 2's Valuer, the Appellate Court has fixed compensation of Rs.50,000/- per month. He, therefore, submitted that

the impugned order deserves to be set aside thereby fixing the compensation as suggested by defendants No.1 & 2's Valuer or as may be determined by this Court as reasonable compensation.

8. On the other hand, Mr. Pandey submitted that at the time of filing reply, the plaintiff claimed Rs.1 Lakh compensation. At that time, the plaintiff was not equipped with the Valuation Report. The plaintiff has submitted Valuation Report dated 12.2.2018 of H. Mehta & Associates, Architects & Govt. Registered Valuers, which has considered the built up area of the ground-floor as 2244 sq. ft. and built up area of mezzanine floor as 896 sq. ft.. The total built up area is 3140 sq. ft.. He further submitted that the suit premises is consisting of Gala Nos.73, 74 and 75 in Noble Industrial Estate also known as 'Badrudin Compound'. On 4.12.2017, the plaintiff's son Azharuddin Badruddin Khan had executed leave and licence in favour of Rajesh Namdeo Sadadekar in respect of 1800 sq. ft. out of 3000 sq. ft. of Gala Nos.A-45(part), 46, 47, 48, 49 and 50(part). The monthly compensation payable is Rs.60,000/- per month. As against this, the Appellate Court has fixed the compensation at Rs.50,000/- in respect of area of 1800 sq. ft. and further observed that though there is mezzanine floor of around 700 sq. ft., said floor has no utility as that of the ground floor. He, therefore, submitted that the petition filed by defendants No.1 & 2 deserves to be

dismissed. He further submitted that in case this Court is upholding the impugned order, the plaintiff is not pressing W.P. (St.) No.15319/2018.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the trial Court has passed eviction decree dated 7.12.2017. Prior to that, on 4.12.2017, the plaintiff's son had executed leave and licence agreement in respect of front portion area admeasuring 1800 sq. ft. out of 3000 sq. ft. of Gala Nos.A-45(part), 46, 47, 48, 49 and 50(part).

10. Mr. Ganbavale submitted that the leave and licence agreement executed on 4.12.2017 is in respect of 3000 sq. ft. and not 1800 sq. ft. and it is in that context, the compensation of Rs.60,000/- was fixed. It is not possible to accept this submission. Relevant recital and schedule of property of leave and licence agreement dated 4.12.2017 is to the following effect :

“AND WHEREAS, the Licensee being in need of a commercial premises has approached the licensor and requested to grant permission and license to use and occupy the front portion area admeasuring 1800 sq. ft. carpet approx. out of 3000 sq. ft. carpet approximately of the said gala and the licensor have conceded the request of the Licensee and granted unto the Licensee permission to use the said gala for the lawful Metal Printing Workshop purpose only along with the furniture lying and being therein together with the

fixtures and fittings appurtenant thereto for a temporary period of 33 Months with effect from 01-10-2017 till 30-06-2020.”

“ THE SCHEDULE OF PROPERTY ABOVE REFERRED TO
ALL THAT COMMERCIAL PREMISES hereinabove referred to as the SAID GALA being Gala No.A-45(Part), 46, 47, 48, 49, 50(Part), total admeasuring 3000 sq. ft. carpet approx. or thereabout lying, being and situate at Noble Industrial Estate, Badruddin Compound, Jama Masjid Lane, Khairani Road, Sakinaka, Mumbai 400072, front portion area admeasuring 1800 sq. ft. carpet approx out of 3000 sq. ft. carpet approximately located at Survey No.6(Part), C.T.S. No.109(Part) of village Saki, Taluka Kurla, in the registration District Mumbai and Sub-District Mumbai Suburban within the limit of L Municipal ward of the Municipal Corporation of Greater Mumbai.”

11. Thus prior to passing of eviction decree on 7.12.2017, the plaintiff's son executed leave and licence agreement on 4.12.2017 in respect of front portion area admeasuring 1800 sq. ft. carpet and not 3000 sq. ft.. It, therefore, cannot be said that the leave and licence agreement dated 4.12.2017 is a camouflage. The suit premises is 1800 sq. ft. + 700 sq. ft. mezzanine floor. While fixing the compensation, the Appellate Court did not fix any compensation in respect of mezzanine floor on the ground that it does not have the utility as that of the ground floor. The Appellate Court also considered the leave and licence agreement executed by the plaintiff's son in respect of adjacent premises which is situate in the same Industrial Estate and fixed compensation at

Rs.50,000/- per month. After considering the material on record, I do not find that the Appellate Court has fixed the compensation which can be termed as either unreasonable or excessive, fanciful or punitive amount. In the case of **Atmaram Properties (P) Ltd. v. Federal Motors Pvt. Ltd., (2005) 1 SCC 705**, the Apex Court, in paragraph-9 observed thus :

“Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record – all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.*, AIR 1986 SC 180, - “commonsense which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants”

12. In the present case, it is evident that the suit premises is situate within Noble Industrial Estate which is located in Sakinaka area, which is a commercial locality. In view thereof, I do not find that the Appellate Court has committed any error in fixing the monthly compensation at Rs.50,000/-. Hence, Writ Petition No.5965/2018 fails and the same is dismissed. Writ Petition (St.) No.15319/2018 is disposed of as not pressed.

13. At this stage, Mr. Ganbavale orally prays for extension of period stipulated in paragraph-4 of the operative part of impugned order by a period of four weeks from today with assurance that defendants No.1 & 2 will not seek further extension of time. In view thereof, notwithstanding dismissal of defendants No.1 & 2's Writ Petition, being W.P. No.5965/2018, the time stipulated in paragraph-4 of the operative part of impugned order for depositing the arrears of compensation either in lump sum or in three equal monthly installments, is extended for a period of four weeks from today with a clear understanding that no further application for extension of time shall be made and entertained by this Court. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)