

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE SIDE JURISDICTION**  
**WRIT PETITION NO.8132 OF 2018**  
**WITH**  
**WRIT PETITION NO. 8152 OF 2018**

|                                     |   |             |
|-------------------------------------|---|-------------|
| Vikas Madangopal Tulsian and others | ] | Petitioners |
| Vs.                                 |   |             |
| M/s. Joy Forzen Foods Pvt. Ltd      | ] | Respondent  |

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Mr. A.R. Pai i/b Neuty Nilesh Thakkar, for Petitioners in both the Petitions.  
Mr. Vaibhav V. Ugle, for Respondent in both the Petitions.

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**CORAM : R.G. KETKAR, J.**

**DATE : 9TH AUGUST, 2018.**

**P.C.**

Not on board. At the request of Mr. Pai, taken up for admission.

2. Heard Mr. Pai, learned Counsel for the petitioners and Mr. Ugle, learned Counsel for the respondent in both the Petitions at length.

3. Writ Petition No. 8132 of 2018 takes exception to the judgment and order dated 5<sup>th</sup> June, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 27 in (P) Appeal No.6 of 2013. By this order, the Appellate Court allowed the application and directed the defendant to pay compensation in respect of the first floor @ Rs. 66,000/- per month from 1<sup>st</sup> June, 2013 till 31<sup>st</sup> December, 2010 with interest @ 9% per annum. The Appellate Court further directed the defendant to pay compensation of Rs.

2,00,000/- per month from 1<sup>st</sup> January, 2011 with increase @ 6% per annum in compensation with interest @ 9% per annum till May, 2018 as also further increased compensation from June, 2018 till decision of the appeal.

4. Writ Petition No.8152 of 2018 takes exception to the judgment and order dated 5<sup>th</sup> June, 2018 passed by the Appellate Bench of the Court of Small Causes Mumbai in Exhibit 28 in (P) Appeal No.7 of 2013. By this order, the Appellate Court allowed the application and directed the defendant to pay compensation in respect of ground floor @ Rs. 33,500/- per month from 1<sup>st</sup> June, 2003 till 31<sup>st</sup> December, 2010 with interest @ 9% per annum. The Appellate Court further directed the defendant to pay compensation @ Rs. 1,00,000/- per month from 1<sup>st</sup> November, 2011 with increase @ 6% per annum in compensation with interest @ 9% per annum till May, 2018 as also to pay further increased compensation from June, 2018 till decision of the appeal.

5. Rule. Mr. Ugle waives service. Having regard to the narrow controversy raised in these Petitions as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and Petitions are taken up for final hearing.

6. Mr. Pai submits that Mr. Bajrang S. Agrawal, Constituted Attorney of Petitioner No.1 and authorized representative of petitioners No.2 and 3 is present in the Court. He has tendered photo copy of his Aadhar Card, which is taken on record and marked 'A' for identification. Mr. Ugale states that Mr. Hemant Gandhi, one of the Directors and Shareholders of the plaintiff/company is present in the Court. He has tendered photo copy of his PAN Card, which is taken on record and marked 'B' for identification. The learned Counsel for the parties submit that by consent of the parties, Petitions may be disposed of by suitably modifying the impugned orders.

7. Mr. Pai states that the petitioner has paid compensation @ Rs. 33,500/- in respect of ground floor and Rs. 66,000/- in respect of first floor up to May, 2018 and will pay for the months of June, July and August, 2018 on or before 16<sup>th</sup> August, 2018.

8. By consent of the parties, the Petitions are disposed of in the following terms:

- [1] By way of abundant caution, it is clarified that as per the order dated 9<sup>th</sup> February, 2017 passed by this Court in Writ Petition No.7967 of 2015 and 7791 of 2015, applications Exhibit 27 and Exhibit 28 stood revived.
- [2] Clause (1) (a) of the orders dated 5<sup>th</sup> June, 2018 below Exhibit 27 and 28 is maintained.
- [3] Clauses 1(b) to 1(f) of the operative part of the impugned orders dated 5<sup>th</sup> June, 2018 below Exhibit 27 in (P) Appeal No.6 of 2013 and below Exhibit 28 in (P) Appeal No.7 of 2013 are set aside.
- [4] Order dated 5<sup>th</sup> June, 2018 below Exhibit 40 challenged in Writ Petition No.8132 of 2018 and order dated 5<sup>th</sup> August, 2018 below Exhibit 38 challenged in Writ Petition No.8152 of 2018 are set aside. Applications Exhibit 38 and Exhibit 40 are restored to the file of the Appellate Court for deciding the same afresh and for reviewing orders dated 23<sup>rd</sup> June, 2015 passed below Exhibit 27 and 28.
- [5] Applications at Exhibit 27 and 40 in (P) Appeal No.6 of 2013 and application at Exhibit 28 and 38 in (P) Appeal No. 7 of 2013 are restored to the file of the Appellate Court for considering relief of enhancement of compensation together with interest and deciding the same afresh.

- [6] Learned Counsel for the parties assure that the parties will remain present before the Appellate Court on 21<sup>st</sup> August, 2018 and for that purpose, no fresh notice be issued to them. Learned Counsel for the parties assure that they will file material in support of their respective case within 2 weeks from 21<sup>st</sup> August, 2018.
- [7] The Appellate Court is requested to dispose of application at Exhibit 27 in (P) Appeal No.6 of 2013 and application at Exhibit 28 in (P) Appeal No. 7 of 2013 as also application at Exhibit 38 in (P) Appeal No.7 of 2013 and application at Exhibit 40 in (P) Appeal No.6 of 2013 within 8 weeks from today.
- [8] The Petitioner shall pay compensation @ Rs. 33,500/- in respect of ground floor and Rs. 66,000/- in respect of first floor for the months of June, July and August, 2018 on or before 16<sup>th</sup> August, 2018.
- [9] All the contentions of the parties on merits are expressly kept open.

**[R.G. KETKAR, J.]**