IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 23647 OF 2018

Mr. Shaikh Abdul Rauf ...Petitioner
Versus
Mrs. Anita Dominic D'souza
And Ors. ...Respondents

....

Mr. Rajiv Chavan, Senior Advocate i/b. Suhail I. Shariff, for the Petitioner.
Mr. Raj Patel i/b. Mohan Patel, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 03rd SEPTEMBER, 2018

P.C.

1. Not on board. At the request of Mr. Chavan taken up for admission.

2. Heard Mr.Rajiv Chavan, learned Senior Counsel for the petitioner and Mr.Raj Patel, learned counsel for respondent No.1, at length.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.1' has challenged the order dated 19.7.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibit-7 in (A-1) Appeal No.8/2018. By that order, the Appellate Court allowed the application Exhibit-7 filed by defendant No.1 under Order XLI Rule 5 of Code of

Civil Procedure, 1908 (for short, 'C.P.C.') and stayed the execution of the eviction decree dated 23.11.2017 passed by the learned trial Judge in R.A.E. Suit No.320/510 of 2010 subject to following conditions :

> “(a) The appellants shall deposit monthly compensation in respect of the suit premises at the rate of Rs.35,000/- (Rupees Thirty five thousand only) per month from 23.11.2017 till July, 2018 i.e. Rs.2,80,000/- (Rupees Two lakh eighty thousand only) in equal eight monthly installments. No further extension or installments will be granted.
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> (b) The appellants continue to deposit per month compensation at the rate of Rs. 35,000/- (Rupees Thirty five thousand only) from August, 2018 till the final disposal of the appeal on or before 10th day of every succeeding month.
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> (c) The Additional Registrar of this Court is hereby directed to invest the amount as and when deposited by the appellants in Fixed Deposit Account for initial period of one year in the Nationalized Bank on next working date and thereafter renew it from time to time.
>
> (d) If the appellants fails to comply the payment of compensation, stay to the execution of decree stands automatically vacated.”

4. In support of this Petition, Mr. Chavan submitted that the suit premises admeasures about 481 sq. ft. The suit premises is situate in a building which is 80 years old and is in a 'gaonthan' area. He submitted that defendant No.1 is aged about 69 years. He is retired person and there is no one to support him. The contractual rent in respect of the suit premises is Rs.84.35 paisa per month. As against this,

by the impugned order, the Appellate Court has directed defendant No.1 to deposit monthly compensation @ Rs.35,000/- per month, which is 416 times the contractual rent. The interim compensation fixed by the appellate Court is not reasonable and is rather oppressive. He has invited my attention to the rejoinder dated 31.3.2018 filed by defendant No.1 and in particular paragraph-7 thereof. He submitted that while fixing the interim compensation, on the basis of Ready Reckoner value, the Appellate Court has not taken into account the depreciation of the value of the property on account of the fact that it is 80 years old structure. He also relied upon the decision of Apex Court in the case of **Niyaz Ahmad Khan v. Mahmood Rahmat Ullah Khan and others, (2008) 7 SCC 539** and in particular paragraphs-6 and 8 thereof.

5. On the other hand, Mr. Patel supported the impugned order. He has invited my attention to paragraphs-23 to 25 of the trial Court's judgment as also the reply dated 28.2.2018 filed by the first respondent herein to the application Exhibit-7. He has also taken me through :

(1) extract of the Property Register Card in respect of C.T.S No.164 (pages-194 to 196 of Petition); and

(2) the relevant pages of Ready Reckoner indicating Bandra-C at page No.104 and in particular Item No.2 dealing with C.T.S. Nos.144 to 291 in respect of which the rate of the building + land per square meter built up is Rs.3,84,800/- (pages-197 to 198 of the petition).

6. Mr. Patel submitted that the suit premises is sea-facing. He submitted that if these facts are taken into consideration, the compensation payable at market value was Rs.1,03,223/- per month. As against this, the Appellate Court has directed defendant No.1 to pay interim compensation @ Rs.35,000/- per month.

7. Mr. Patel also relied upon the decision of this Court in **Super Max International Pvt. Ltd. and another Vs. State of Maharashtra and another, 2009(2) Mh.L.J. 134** and in particular paragraphs-14 and 15 thereof.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Defendant No.1 has suffered eviction decree passed by the trial Court on 23.11.2017. The suit premises is situate in C.T.S. No.C/164. While decreeing the suit, the learned trial Judge in paragraphs-23 to 25 has considered the admissions given by defendant No.1 in his cross-examination. In paragraph-23, the learned trial Judge has referred to the fact that one of the sons of defendant No.1 Jahangir is working in Emirad Consultant in UAE.. He is sending money to defendant No.1 and other family members.

9. In paragraph-24, the learned trial Judge noted that other son of defendant No.1 Alamgir is carrying on business in the name of Metro Lines and Gypsy Holidays. Defendant No.1 admitted that rent and water charges of the suit premises were given through cheque

issued in the name of Metro Lines under the signature of Alamgir. The wife of Alamgir, namely, Shama is running ladies boutique at Bandra (West). Alamgir is having Innova car and Honda Jazz which are belonging to Metro Lines and used by Alamgir and his family. Apart from that, Alamgir was having Santro car.

10. In paragraph-25, the learned trial Judge noted that defendant No.1 has on many times visited foreign countries. Defendant No.1 is also having good financial condition.

11. The Appellate Court has considered this aspect in paragraph-13 of the impugned order. A perusal of the reply and in particular paragraphs-5 and 6 shows that respondent No.1/plaintiff has claimed that the value of the suit premises comes to Rs.2,06,44,520/- as per the ready reckoner and taking into account the return of 6% p.a. on the market value the compensation payable at market rate comes to Rs.1,03,223/-. Said assertion is supported by the extract of property register card at Exhibit-1 (page-194 to 196 to the petition) as also the relevant pages of ready reckoner at Exhibit-2 (pages-197 to 198). The suit premises is situate in C.T.S. No.C/164.

12. In the case of **Super Max International Pvt. Ltd.** (supra), the learned Single Judge (Coram: S.J. Vazifdar, J., as His Lordship then was) has observed in paragraphs-14 & 15 thus :

> "14. The Stamp Duty Ready Reckoner publishes the rates for properties in various parts of Mumbai. In respect of similar properties situated in the same area, the value of the property is stated to be about Rs.12000/- per sq. ft. Normally, the rates mentioned in the ready reckoner are lower than the actual market rates. In any event, they are seldom higher than the actual market rate. A reasonable return on a leave and licence basis would be not less than 6% of the value of the property.
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> 15. I intend taking an extremely charitable view in the petitioner's favour while deciding the condition subject to which the execution of the decree is to be stayed. I do so as the possibility of the respondent recovering the amount determined finally is high considering that the tenant is the State. I will presume on the basis of the Ready Reckoner that the suit property would fetch a rate of Rs.12000/- per sq. ft. The value of the property which admeasures 9000 sq. ft. would thus be a minimum of Rs.10,80,00,000/-. Even assuming a rate of return of 6% per annum, it would fetch a sum of Rs.64,80,000/- per annum or Rs.5,40,000/- per month. Anything less would be illusory."

13. In paragraph-14, as extracted hereinabove, the learned Judge has observed that normally, the rates mentioned in the ready reckoner are lower than the actual market rates. In any event, they are seldom higher than the actual market rate. A reasonable return on a leave and licence basis would be not less than 6% of the value of the property.

14. Mr. Chavan relied upon the decision in **Niyaz Ahmad Khan**

(supra). A perusal of that decision shows that the respondents had initiated proceedings under Section 21(1)(a) under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The Prescribed Authority as also the Appellate Authority dismissed the proceedings initiated by the respondents. Aggrieved by these orders, the respondents initiated Writ Petition before the Allahabad High Court under Article 226 and/or Article 227 of the Constitution of India. The learned Single Judge, by interim direction dated 17.10.2006 ordered the appellant before the Apex Court to pay Rs.12,050/- per month . It is in that context, the Apex Court observed in paragraph-6 thus :

> "6. Even assuming that the High Court has power to increase the rent, we fail to understand how in the absence of any evidence -- either oral or documentary or by way of affidavit, the learned Single Judge could assess the rent as Rs.12,050 which is more than 48 times, the rent of Rs.250 earlier determined. The learned Single Judge did not consider any of the relevant circumstances like the market value of the building on the date of letting, prevailing rentals in the locality as on the date of letting, the size or situation or amenities, age of construction, latest assessment of the building or other circumstances. Further, when a premises consisting of several rooms, verandahs, kitchen, terrace, bathrooms, latrines, is let out as a single unit, the question of assessing the rent with reference to each room or portion of such premises separately does not arise. The learned Judge's observation that by taking a pragmatic approach he was assessing the rent at Rs.12,050, to say the least, is arbitrary and contrary to law."

15. In paragraph-8, the Apex Court observed that conditions in regard to stay should not be unreasonable or oppressive or in terrorem. Adopting some arbitrary figure as prevailing market rent without any basis and directing the tenant to pay absurdly high rent would be considered oppressive and unreasonable even when such direction is issued as a condition for stay of eviction.

16. In my opinion, the decision in **Niyaz Ahmad Khan** (supra) is not applicable in the facts and circumstances of the present case as the order passed by the Appellate Court is based upon the material on record. In view thereof, I do not find that any case is made out for interfering with the impugned order. Hence, the Petition fails and the same is dismissed.

17. At this stage, Mr.Chavan submitted that by the impugned order, the petitioner/defendant No.1 is directed to deposit arrears in eight monthly installments and said period expires today. In view thereof, the time stipulated in clause 2(a) of the operative part of the impugned order dated 19.7.2018, extracted hereinabove, is extended by a period of four weeks from today. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)