

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10915 OF 2017

Shaikh Kalandar Shaikh Nazir	...Petitioner
Vs.	
Smt.Niyamathi Mohammed Attar & Anr.	...Respondents

Mr.Tushar Dahibawkar i/b. M/s.Dahibawkar & Co. for Petitioner.
Mr.Shripad Jagdale for Respondent No.1.

Coram : G.S.KULKARNI, J

Date : 12th FEBRUARY 2018

P.C.

After this petition was heard for some time, learned Counsel for the parties are agreeable that an opportunity should be granted to the parties to place on record the appropriate valuation reports so as to determine the compensation/interim mesne profits in respect of the suit premises.

2. The learned appellate bench of the Small Causes Court in paragraph 8 of the order has clearly observed that neither the appellant nor the respondents has filed any comparable instances. They have also not filed the valuation reports to determine the compensation/ interim mesne profits in respect of the suit premises. The learned trial Judge nonetheless proceeded to fix the amount of Rs.5,000/- per month as a compensation amount for use and occupation of the suit premises by the petitioner from 09.04.2013. If this being the position, in my opinion, interest of

justice would require that a fair opportunity be granted to both the parties to place on record such valuation reports so that the Court can come to an appropriate conclusion as to what would be interim compensation which can be fixed.

3. In the circumstances, the petition is disposed of by the following order:-

ORDER

- i. The parties are at liberty to place on record appropriate material/valuation reports to support their respective contentions in regard to the compensation/interim mesne profits in the suit premises;
- ii. Learned appellate bench of the Small Causes Court, on considering the appropriate material placed on record, shall decide the compensation which needs to be deposited in the interim period as a condition for stay to the execution and judgement and decree dated 9th April 2013;
- iii. All contentions of the parties in that regard are expressly kept open;
- iv. In the meantime, the petitioner shall deposit in the trial Court 50% of the compensation amount as directed in the impugned order dated 8th August 2017.

Learned Counsel for the petitioner, on instructions, submits that said amount will be deposited within a period of four weeks from today. Statement is accepted.

- v. The appellate bench of the Small Causes Court shall consider the amount of interim compensation on its own merits and on the

basis of fresh material and without reference to the impugned order dated 8th August 2017.

vi. Petition is disposed of in the above terms. No costs.

In view of the above order, the respondent shall not proceed with the execution of the impugned order till the interim compensation is decided by the appellate bench of the Small Causes Court.

vii. Needless to observe that if the 50% of the compensation amount is not deposited as noted above, the respondents are free to pursue the execution proceedings.

viii. Respondents are at liberty to make an application before the appellate bench for withdrawal of the deposited amount which shall be considered on its own merits.

(G.S.KULKARNI, J)