

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

CIVIL APPLICATION NO. 396 OF 2017
IN
CIVIL REVISION APPLICATION NO. 242 OF 2017

Mr. Manzal Mohammed
S/o Kanji Mohammed .. Applicant.

IN MATTER BETWEEN THE PARTIES

Salimbhai Taher Merchant .. Petitioner/
(Org. Appellant)

Vs.

Mr. Manzal Mohammed
S/o Kanji Mohammed & Ors. .. Respondents

...

Mr. J.V. Parmar a/w Mr. O.S.Kamwal for Applicant.
Ms. Jyoti R. Shahu I/by Mr. D.C.Patankar for Respondents.

...

***CORAM : G.S. KULKARNI, J.
DATE : 9th JANUARY, 2018.***

P.C. :

1. Heard learned counsel for the applicant and the learned counsel for the Respondents. Petitioner-defendant No.2 has also made submissions.

2. By this civil application, the applicant-landlord is seeking the following prayers:-

(a) That this Hon'ble Court be pleased to revise the compensation from the present compensation of Rs.20,000/- during the pendency of the Civil Revision Application.

(b) That this Hon'ble Court be pleased to expedite the hearing of the Civil Revision Application by fixing the early date of hearing.

(c) Cost of the Application be provided for; and

(d) For such other and further reliefs be granted as deem fit and proper.

3. Reply affidavit has been filed opposing this application.

4. By an order dated 26th March, 2012, the Appellate Bench of the Small Causes Court has fixed compensation at an amount of Rs.15,000/- per month to be deposited by the respondent-tenant as a condition for the interim relief which was enhanced by an amount of Rs.5,000/- making it to Rs.20,000/-, by this Court by an order dated 29th August, 2017 which reads thus:

“1. Heard learned counsel for the parties.

2. Rule.

3. There shall be interim relief in terms of prayer clause (c) subject to the following conditions:

(a) The applicant to file usual undertaking in this Court within a period of two weeks from today, after furnishing advance copy to the learned counsel appearing for the respondent;

(b) The applicant shall deposit and continue to deposit in this Court compensation at the rate of Rs.20,000/- per month on or before 05th day of each succeeding month. Such deposit shall be with effect from 01st July, 2016, since, the impugned order is dated 12th July, 2016. The time limit for deposit of arrears of compensation shall be three months from today.

4. It is made clear that in case of any default in the deposit of arrears or in case of any two consecutive defaults or

any three non-consecutive defaults this interim order shall stand vacated without further reference to this Court.

4. The aforesaid amount is determined on the basis of the determination by the Appellate Court made in the year 2015. The Appellate Court had determined reasonable compensation at the rate of Rs.15,000/- per month.

5. Mr. Parmar waives service on behalf of the respondent Nos. 1 to 9.

6. The applicant to take steps to serve the unserved respondents.

7. Leave to place on record the judgment and decree dated 18th April, 2011 as also notes of evidence/documents.”

5. The contention as urged on behalf of the applicant is that an amount of Rs.20,000/- is required to be enhanced, considering that the premises are commercial premises and they are situated at a prime location. The submission is supported on the basis of a valuation report. It is stated that the valuation report is of a registered valuer wherein it is recorded that mesne profit of the suit premises is worth Rs.98,350/-.

6. Reply affidavit has been filed by petitioner-defendant No.2 to dispute the said valuation report. It is contended that the valuation as made by the valuers is an incorrect valuation. It is submitted that the premises are old and access to the premises is not in appropriate condition, illegal activities are carried out by the applicant at the access to the suit premises. It is also submitted that part of the suit premises has been used as a godown.

7. Having considered the documents and the pleadings as placed on record and having heard the learned counsel for the parties, I am of the opinion that there ought to be some increase in the amount of

compensation, considering that the premises are commercial premises, they are in full use and occupation of the appellant-defendant No.2 for the travels business. The valuation report though appears to be on a higher side, in my opinion, interest of justice would be served if the petitioner-defendant No.2 is directed to deposit an amount of Rs.30,000/- per month instead of Rs.20,000/- per month as directed by the order dated 29th August 2017. No prejudice shall be caused to the petitioner. Ordered accordingly. The amount of compensation at Rs.30,000/- per month shall be deposited by the appellant-defendant No.2 from the month of March, 2018.

8. The Civil Application is accordingly disposed of.

9. Considering the fact that Respondent Nos. 1 to 8 are senior citizens, the hearing of the Civil Revision Application is expedited. Civil Revision Application shall be placed in the list of expedited matters as per its turn.

(G. S. KULKARNI, J.)