

Rajendra Venkatesh Velangi and others	...	Petitioners
Vs.		
Anil Raghunath Gachke and others	...	Respondents

Mr. Rajendra Dhuri a/w. Ms Bhakti Kansara and Amruta V. Athavale for Petitioners.
Mr. G. S. Godbole, Senior Advocate i/b. Mr. Kaustubh Thipsay for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 06, 2018

P.C. :

Heard Mr. Dhuri, learned Counsel for the petitioners and Mr. Godbole, learned Senior Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs' - respondents in the appeal, have challenged the judgment and order dated 18.03.2017 passed by the Appellate Bench of the Small Causes Court at Bombay below exhibit-6 in A1 Appeal No.483 of 2007 as also the judgment and order dated 14.06.2017 passed by the Appellate Bench of the Small Causes Court in Review Application No.5 of 2017. By order dated 18.03.2017, the Appellate Court allowed the application exhibit-6 filed by the respondents under Order XLI, Rule 5 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for stay of eviction decree dated 12.06.2007 passed by the learned trial Judge in R.A.E.Suit No.286/583 of 1997 subject to conditions. In so far as the controversy raised in the present Petition is concerned, clauses [2](a) and (b) of the operative part of the order dated 18.03.2017 are relevant and the same read thus,

“[2] Execution of the decree dated 12.06.2007 passed in R.A.E.Suit No.286/583 of 1997 is stayed till final decision of

the present appeal on following conditions.

(a) The appellant shall deposit interim compensation @ Rs.10,000/- (Rs.Ten Thousand only) per month from the date of Additional Affidavit of Respondent No.2 (Exh-37) i.e. 27.03.2014 during pendency of the appeal.

(b) The appellant is given six months time to clear the arrears for the period from 27.03.2014 to March, 2017.”

3. Rule. Mr. Thipsay waives service for respondents. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Dhuri submitted that while granting stay to the eviction decree on 18.03.2017, the Appellate court committed serious error in directing the respondents to deposit interim compensation @ Rs.10,000/- per month **from the date of additional affidavit of petitioner No.2 herein (Exh.37) dated 27.03.2014** instead of directing the respondents to deposit interim compensation @ Rs.10,000/- per month from the date of the eviction decree i.e. 12.06.2007. He invited my attention to paragraph 29 of that order. In paragraph 29, the Appellate Court observed that generally, the Courts grant interim compensation from the date of decree pending hearing of the appeal. However, present matter is exception to that rule. Respondents (petitioners herein) had not sought interim compensation initially in their reply to the respondents' application (appellants before the Appellate Court) at exhibit-6 and have sought interim compensation as per the decision of the Apex Court in ***Atmaram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., (2005) 1 SCC 705*** in their additional affidavit dated 27.03.2014, exhibit-37. Hence, it would be correct, legal and proper to direct the respondents to deposit interim compensation from 27.03.2014 and not from the date of the decree. He submitted that

the reasons given in paragraph 29 are clearly in the teeth of the decision of the Apex Court in the case of **Atmaram Properties (P) Ltd.** (*supra*). He submitted that the interim compensation cannot be awarded from the date of filing of reply or additional reply, as the case may be but has to be fixed from the date of passing of eviction decree. The present matter is also not in exception in that regard. He, therefore, submitted that the order directing the respondents to pay compensation from the date of additional affidavit dated 27.03.2014 deserves to be modified thereby directing the respondents to deposit interim compensation from the date of the eviction decree. He submitted that in fact precisely for that purpose, petitioners filed Revision Application. However, by the impugned order, the Appellate court partly allowed the Review Application and modified condition No.(g). He, therefore, submitted that the impugned orders deserve to be partly modified by directing the respondents to pay interim compensation from the date of the eviction decree.

5. On the other hand, Mr. Godbole supported the impugned orders. He submitted that the suit premises admeasures 407 sq.ft. The eviction decree is passed in the year 2007 and in that year, it would have not fetched compensation @ Rs.10,000/- per month. He submitted that if the Court is inclined to direct the respondents to deposit interim compensation from the date of the eviction decree, in that event, the compensation amount may be reduced to Rs.5,000/- to Rs.6,000/- per month instead of Rs.10,000/- per month.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the learned trial Judge had passed eviction decree against the respondents herein on 12.06.2007. One of the grounds of passing eviction decree is ground under Section 13(1)(k)

of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'), namely, change of user from residential to commercial. With the assistance of the learned Counsel appearing for the parties, I have perused the discussion of the learned trial Judge in respect of the said ground, which is found in paragraphs 27 to 30. After considering the evidence on record, the learned trial Judge has recorded that the petitioners / plaintiffs have established the ground of change of user from residential to non-residential purpose.

7. It is also not in dispute that the suit premises is Block No.9 situate on the ground floor of Chere View Building at Lakhamsi Nappoo Road, Dadar, Mumbai - 400 014. Prima facie, the learned trial Judge has decreed the Suit on the ground of change of user namely, from residential to non-residential purpose. While fixing the interim compensation, the Appellate court had considered the report of Khandekar Architect and Surveyor relied by the petitioners herein claiming interim compensation @ Rs.64,300/- per month. As against this, respondents did not produce any document including valuation report. After considering the instances relied by the present petitioners, in paragraph 28, the Appellate Court observed that the petitioners' Architect had arrived at the figure of Rs.64,306/- for commercial premises and Rs.23,606/- for residential premises. The Appellate court declined to fix the compensation by considering the ground of change of user. Be that as it may, at the prima facie stage, the Appellate Court should have determined the compensation after considering the fact that decree was passed on the ground of change of user. At the interlocutory stage, the Appellate Court cannot simply ignore the finding recorded by the learned trial Judge after a full-fledged trial. The Appellate Court should have fixed interim compensation on the basis that suit premises are used for non-residential purpose. Nonetheless, the main grievance of the petitioners herein is that the Appellate Court was not justified in

directing the respondents to pay compensation from the date of additional affidavit.

8. In the case of **Atmaram Properties (P) Ltd.** (*supra*), the Apex Court, while considering the provisions of Order XLI, Rule 5 of C.P.C. has referred to its earlier decision in *Chander Kali Bali Vs. Jagdish Singh Thakur*, (1977) 4 SCC 40 in paragraph 11 and observed that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion, the Court held that the tenant was not liable to pay any damages or mesne profits for the period commencing from 01.01.1973 and ending on 10.08.1975 but he remained liable to pay damages or mesne profits from 11.08.1975 when the Appellate Court for the first time decreed the Suit until the delivery of the vacant possession of the accommodation.

9. In my opinion, the Appellate Court committed serious error in directing the respondents to pay compensation from the date of filing of the additional affidavit. In a given case, respondents in the appeal may not file any reply to the application under Order XLI, Rule 5 of C.P.C. If the reasoning given by the Appellate Court is accepted, in that event, the tenant who has suffered eviction decree, is not required to pay any interim compensation. Certainly, this cannot be countenanced. When tenant applies for stay under Order XLI, Rule 5, the Appellate Court has to order deposit of interim compensation from the date of passing of the eviction decree and it has no other option to direct deposit of compensation to any other future date. Therefore, the direction issued by the Appellate Court to that extent cannot be sustained and deserves to be modified.

10. Mr. Godbole submitted that instead of awarding compensation @ Rs.10,000/-, it may be reduced to Rs.5,000 to Rs.6,000/- per month as

the suit premises would have not fetched compensation @ Rs.10,000/- per month in the year 2007. The said submission is stated to be rejected. As the trial Court has passed eviction decree on the ground of change of user, namely residential to non-residential user and the suit premises is situate near Dadar Station, I am unable to accept the submission of Mr. Godbole that compensation should be fixed either @ Rs.5,000/- or Rs.6,000/- per month. Faced with this difficulty, Mr. Godbole submitted that three months time may be given to the respondents to clear the arrears of interim compensation from the date of the eviction decree. In view thereof, it is not necessary to deal with the order dated 14.06.2017 passed by the Appellate Court in Review Application. Order accordingly.

11. In the light of the above discussion, Petition is disposed of in the following terms:

- a. Impugned order dated 18.03.2017 is modified by directing the respondents, who are appellants before the Appellate Court, to deposit interim compensation @ Rs.10,000/- per month from the date of the eviction decree i.e. 12.06.2007;
- b. Respondents shall clear the arrears of compensation from 12.06.2007 till 31.05.2018, subject to adjustment, within three months from today with clear understanding that no application for further extension shall be made and entertained by this Court;
- c. Respondents shall continue to deposit interim compensation @ Rs.10,000/- per month from the month of June 2018 onwards till the disposal of the appeal, on or before 10th day of the succeeding month;
- d. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)