

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

WRIT PETITION NO. 11946 OF 2017

Shri. Vishwanath Kashinath Tambe ...Petitioner

Vs.

Shri. Narayan Ramchandra Humbe, (Decd)
Through his legal heirs & Ors. ... Respondents

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Mr. P. J. Pawar for the Petitioner.
Mr. Girish B. Badiger for the Respondent Nos.1A to 1F.

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**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 15, 2018.**

P.C. :

1. Heard learned counsel for the parties.
2. Challenge in this petition is to the order dated 11th September 2017 passed by learned District Judge-7, Pune, whereby the application of the petitioner-tenant seeking stay to the execution of the judgment and decree passed by the Trial Judge in Civil Suit No.434/2007 dated 6.4.2013 has been granted on the following terms:

“a. The applicant shall deposit compensation at Rs.50645/- per month from the date of decree i.e. 6.4.2013 and shall continue to deposit the same on 5th day of each calender month.

b. Arrears of compensation shall be deposited within 3 weeks, else

the application will stand automatically rejected.”

3. Mr. Pawar, learned counsel for the petitioner submits that the compensation of Rs.50645/- per month as directed to be paid by the impugned order is for the period from the date of decree and continued to be deposited till the adjudication of the appeal. Mr. Pawar submits that the learned District Judge ought to have considered the actual condition and the nature of the premises, before considering the ready reckoner rates and/or agreement of leave and licenses in the vicinity. It is submitted that market rate which is considered, is totally unrealistic and that the compensation as directed to be deposited is unreasonable qua the premises in question. It is submitted that in the application, as moved by the respondent-landlord, initially a prayer was made for fixing of the compensation at the rate of Rs.32,000/-. It is submitted that in paragraph 7 of the said application the respondent-landlord had mentioned that petitioner be directed to deposit an amount of Rs.21,000/- per month. It is submitted that considering all the materials, as also that a small canteen business is being conducted in the premises, the amount as directed to be deposited by the impugned order is exorbitant and is unaffordable to the petitioner.

4. On the other hand, learned counsel for the respondent-landlord has submitted that the learned District Judge has proceeded on correct

assumption of the ready reckoner rates in arriving at the amount of Rs.50645/- to be deposited by the petitioner.

5. I have heard learned counsel for the parties and with their assistance I have also gone through the documents and the photographs of suit premises placed on record by the respective parties. It is not in dispute that in the suit premises a small canteen business is undertaken. The premises are not at all in a good shape they are in fact in a bad condition as seen from the photographs. The photographs as placed on record are not disputed. The roof of the premises is also covered by plastic covers, as reflected from the photographs at page 90. This being the condition of the premises it is a matter of serious doubt whether the ready reckoner rates would apply which perhaps may apply to ideal premises and thus cannot be a standard to ascertain the compensation which may be received by the landlord going by the market rate. The compensation as required to be fixed ought to be of a reasonable standard. It cannot be exorbitant or coercive and should be sufficient to mitigate the hardship of the landlord who is being kept away from the fruits of the of decree.

6. Considering the facts and circumstance of the present case and the condition of the premises, in my opinion interest of justice would be served, if the impugned order dated 11th September 2017 passed by

the learned District Judge is modified by directing the petitioner to deposit compensation at Rs.25,000/- per month from the date of the decree 6.4.2013 and continue to deposit the same on 5th day of each calender month. The arrears of compensation shall be deposited by the petitioner within a period of two months from today. Ordered accordingly.

7. The petition is disposed of in the above terms. No costs.

8. Needless to observe that the contentions of the parties on merits are expressly kept open.

9. Mr. Pawar, learned counsel for the petitioner informs that the respondent has already initiated execution proceedings. In view of the above orders, the execution proceedings shall remain stayed till the expiry of the time granted to the petitioner to deposit the arrears of compensation. In the event of a default on the part of the petitioner to deposit the amount as directed, it would be open to the respondent to proceed to execute the decree.

10. The amount of compensation of Rs.25,000/- for the month of January be deposited on or before 24th January 2018.

(G.S. KULKARNI, J.)