

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7681 OF 2016

M/s. Kakumal Hiranad & Co. & Ors.	]	Petitioners
Vs.		
Sahyadri Sahakari Bank Limited	]	Respondent

WITH

WRIT PETITION [STAMP] NO.29045 OF 2016

Sahyadri Sahakari Bank Limited	]	Petitioner
Vs.		
M/s. Kakumal Hiranad & Co. & Ors.	]	Respondent

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Mr. Neel G. Helekar for Petitioner in W.P. No.7681 of 2016 and Respondent in W.P. (ST) No.29045 of 2016.

Mr. Ajit J. Kenjale, for Petitioner in W.P. (ST) No.29045 of 2016 and Respondent in W.P. No.7681 of 2016.

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CORAM : R.G. KETKAR, J.

DATE : 4TH JULY, 2018.

P.C:

Heard Mr. Helekar, learned Counsel for the petitioner in W.P. No. 7681 of 2016 and respondent in W.P. (ST) No.29045 of 2016 and Mr. Kenjale, learned Counsel for petitioner in W.P. (ST) No.29045 of 2016 and respondent in W.P. No.7681 of 2016 at length.

2. Both these Petitions take exception to the order dated 1st April, 2016 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 8 in Appeal No.286 of 2015. By that order, the Appellate Court

allowed the application Exhibit 8 filed by the petitioner, M/s. Kakumal Heeranand & Ors, hereinafter referred to as “M/s. Kakumal” and stayed eviction decree dated 30th April, 2015 till final disposal of the appeal subject to M/s. Kakumal depositing compensation @ Rs. 45,000/- per month from the date of decree i.e from 30th April, 2015 up to 31st March, 2016 within a period of two months from the date of the order and continue to deposit compensation @ Rs. 45,000/- per month from 1st April, 2016 and onwards till disposal of the appeal on or before 10th day of each succeeding month in the Court.

3. In support of Petition filed by M/s. Kakumal, Mr. Helekar strenuously contended that the Appellate Court was not justified in fixing interim compensation @ Rs. 45,000/- per month. He invited my attention to valuation report dated 1st August, 2015 made by Katkar Engineers & Valuers and in particular item 33 and item B. Against item No.33, valuer opined that they did not consider instances of sale of immovable property in the locality on separate sheet on the ground that they did not consider essential as fair market value of similar type of commercial use premises were considered from local inquiries and market survey in said vicinity and location. In clause B, it is set out that valuer made local inquiries with estate agents regarding monthly rent. Monthly rent is around Rs. 80/- to Rs. 100/- per square feet built up area. He submitted that save and except valuation report, no material was produced by the respondent, Sahyadri Sahakari Bank Ltd (for short 'Bank'). The Appellate Court also failed to appreciate that the contractual rent of the suit premises was Rs. 197.85. He submitted that M/s. Kakumal is ready and willing to deposit compensation as per order dated 7th July, 2016. By that order, Kakumal was directed to deposit arrears of compensation @ Rs. 22,500/- per month from 30th April, 2015 to 30th June, 2016.

4. On the other hand, Mr. Kenjale submitted that M/s. Kakumal did not produce any material such as valuation report or other instances to contradict the stand of the Bank. In any case, he submitted that if the Court is inclined to uphold the impugned order, Bank is not pressing Writ Petition (ST) No.29045 of 2016.

5. I have considered the rival submissions of learned Counsel for the parties. I have also perused the material on record. It has come on record that suit premises is 876 square feet situate on the first floor of Sahyadri Bhuvan, Vijaywadi being new survey No.507 of Bhuleshwar Division, Chira Bazar, Mumbai – 400 002. The Appellate Court has considered valuation report dated 1st August, 2015 relied on by the Bank. After considering the fact that the suit premises is let out for commercial purpose and is in busy commercial locality and after considering commercial potential and prevailing market rent, the Appellate Court has fixed interim compensation @ Rs. 45,000/- per month as against Rs. 89,000/- per month recommended by the valuer appointed by the Bank. M/s. Kakumal did not produce any material for fixing reasonable compensation. For the reasons recorded in paragraph 7 and 9 of the impugned order, I do not find the Appellate Court committed any error in fixing interim compensation. Hence, Petition fails and the same is dismissed.

6. Mr. Helekar states that as per the order dated 7th July, 2016 of this Court, Kakumal had deposited interim compensation @ Rs. 22,500/- per month from 30th April, 2015 to 30th June, 2016 in this Court and has thereafter not deposited any amount in this Court. In view thereof, he seeks 4 weeks time to comply the impugned order. At his request, time to comply the impugned order is extended by 4 weeks from today with clear understanding that no application for further extension shall be made and entertained by this Court.

Liberty to apply to the Appellate Court for expeditious disposal of the appeal is granted.

7. Writ Petition (ST) No.29045 of 2016 is disposed of as not pressed.
Order accordingly.

[R.G. KETKAR, J.]