

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12011 OF 2018

Jadavji Shivji Chheda ... Petitioner
Vs.
Narayan Baban Thorat (decd) by his legal
heirs Sunanda Narayan Thorat and others ... Respondents

Mr. Aniket Ransubhe i/b. Mr. Ajay Basutkar for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 23, 2018

P.C. :

Not on Board. At the request of Mr. Ransubhe, taken up in the production Board.

2. Heard Mr. Ransube, learned Counsel for the petitioner at length.
3. By this Petition under Article 227 of the Constitution of India, petitioner / appellant (original defendant) has challenged the order dated 18.09.2018 passed by the learned District Judge-18, Pune below exhibit-3 in Civil Appeal No.368 of 2017. By that order, the learned District Judge allowed the application exhibit-3 made by the petitioner and stayed eviction decree dated 28.04.2017 passed by the learned Judge in Civil Suit No.15 of 2014 only to the extent of delivery of possession of the suit property subject to following conditions:
 - a. The appellant (petitioner herein) shall deposit the costs as granted by the trial Court in the decree.
 - b. The appellant shall deposit occupation charges at the rate of Rs.25,000/- per month from May 2017 to September 2018 i.e. total of Rs.4,25,000/- within one month from today.
 - c. The appellant shall continue to deposit occupation charges at the rate of Rs.25,000/- per month from October 2018

onwards till disposal of the appeal.

- d. The amount deposited shall not be withdrawn by the respondents and the decision in that regard would be taken at the time of final judgment.
- e. On deposit of the amount mentioned in this order, the same shall be kept in fixed deposit and it be renewed from time to time as may be required.
- f. If there is default in deposit of the amount of Rs.4,25,000/- in time or if there is default for two consecutive months to deposit the occupation charges of Rs.25,000/- in the Court after October 2018 onwards, the order of stay shall automatically stand vacated.
- g. On compliance, inform the trial Court.

4. In support of this Petition, Mr. Ransubhe strenuously contended that the learned District Judge was not justified in passing the impugned order thereby imposing condition of depositing occupation charges @ Rs.25,000/- per month. He submitted that while fixing the reasonable compensation, the learned District Judge did not consider the facilities available in the suit premises. Respondents-plaintiffs did not produce any material on record showing availability of the facilities in the suit premises. The learned District Judge fixed the interim compensation on the basis of -

- a. Ready Reckoner;
- b. Leave and Licence Agreement of the year 2016 in respect of shop admeasuring 150 sq.ft.;
- c. Leave and Licence Agreement of the year 2014 in respect of shop admeasuring 252 sq.ft.; and
- d. Leave and Licence Agreement of the year 2016-17 in respect of shop admeasuring 225 sq.ft.

All these agreements are from the vicinity of Shivajinagar.

5. He submitted that the learned District Judge also failed to appreciate that the area of the suit premises is 210 sq.ft. The compensation fixed by the learned District Judge is exorbitant and oppressive. He submitted that basically, the learned District Judge has not followed the guidelines laid down by this Court in paragraph 21 of the decision in **Writ Petition No.6858 of 2008, Chandrakant Dhanu and another Vs. Sharmila Kapur and others** decided on **07.01.2009**. In paragraph 21, this Court observed that the basic burden lies on the landlord to prove and support his case of reasonable compensation / mesne profits. He must put on record material documents along with the affidavit to support his case of enhanced compensation. After the landlord places material on record, the Court needs to consider the said material by giving full opportunity to the licensee / tenant. The valuation report may be at least one of the Government recognized valuer, apart from private valuer report, if any. The Court has to take into consideration - (i) the Rent Control Legislation governing the particular premises, residential or non-residential, (ii) the location / area of the premises, (iii) the age / nature of construction of the premises, (iv) the facilities in the premises and outside the premises, advantages and disadvantages, (v) the market value and the rental value of the premises based on architecture / expert / valuation reports / opinion, (vi) other instances of the rent / licence fees of similarly situated premises, (vii) the date of termination of the tenancy / licence. The Court also has to consider that the compensation was awarded as a condition precedent should not be oppressive and unreasonable which in a given case, if tenant fails to pay, has no option but to suffer the execution of a decree. The Court has to give opportunity to both the parties and decide the reasonable compensation, based upon authenticated material produced on record, pending the appeal. The Ready Reckoner is basically for calculation of the stamp duty as per the Bombay Stamp Act, 1958. The

market value of the property for the purpose of stamp duty or capital gain taxes, cannot be overlooked but while fixing the rent of licence fee or compensation, the formula or method of compensation, stamp duty cannot be extended arbitrarily.

6. Mr. Ransubhe further submitted that the impugned order may be set aside thereby giving opportunity to the petitioner to file rejoinder and place on record material in support of his case. He, therefore, submitted that the impugned order may be set aside and the matter may be remitted to the District Court for deciding application exhibit-3 afresh.

7. I have considered the submissions advanced by the learned Counsel appearing for the petitioner. It is not in dispute and rather is a matter of record that the petitioner has suffered eviction decree on 28.04.2017. Aggrieved by that decision, petitioner has instituted appeal under Section 96 read with Order XLI of C.P.C. Order XLI, Rule 5 reads thus,

“5. Stay by Appellate Court.- (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

*Explanation:-*An order by the appellate court for the stay of execution of the decree shall be effective from the date of the communication of such order to the court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the appellate court shall, pending the receipt from the appellate court of the order for the stay of execution or any order to the contrary, be acted upon by the court of first instance.

(2) **Stay by court which passed the decree:** Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing there from, the court which passed the decree may on

sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3) the court may make an ex-parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security in an appeal against a decree for payment of money as specified in sub-rule (3) of Rule 1, the court shall not make an order staying the execution of the decree.”

8. In the case of ***Atma Ram Properties Private Limited Vs. M/s. Federal Motors Pvt. Ltd., (2005) 1 SCC 705***, the Apex Court has observed in paragraph 9 that while granting an order of stay under Order XLI Rule 5 of the C.P.C., the appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal in so far as those proceedings are concerned. Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record - all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. In paragraph 18, the Apex Court observed that the tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the

appellate Court. While ordering stay, the appellate Court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate Court to put the tenant-appellant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent.

9. In the case of ***State of Maharashtra Vs. Super Max International Private Limited***, (2009) 9 SCC 772, the Apex Court observed that there is no conflict between the decisions rendered in ***Atma Ram Properties*** (*supra*) and ***Niyas Ahmed Khan Vs. Mahmood Rahmat Ullah Khan***, (2008) 7 SCC 539. In paragraphs 77 and 78, it was observed thus,

“77. In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a order or decree of an eviction passed under the Rent Act it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

78. In the case in hand, the High Court has fixed the amount of Rs. 5,40,000/- per month with reference to the Stamp Duty Ready Reckoner and hence, its reasonableness cannot be doubted. In fairness to Mr. Lalit he did not challenge the fixation of the amount on that ground.”

10. If the principles laid down in the aforesaid decisions are applied to the facts of the present case, it is evident that petitioner-defendant did not adduce any documentary evidence for fixation of reasonable compensation. As against this, the respondents-plaintiffs filed documents for fixation of reasonable compensation, as indicated

hereinabove. The learned District Judge observed that the agreements relied by the plaintiffs are from the vicinity of Shivajinagar and the suit property is also from Shivajinagar. The suit property is shop admeasuring 210 sq.ft. on the ground floor facing West situate towards Northern side in Final plot No.629, H.No.1274 at Shivajinagar, Pune. In paragraph 6, the learned District Judge observed that the nature of construction of the suit property, the facilities available in the suit property and the vicinity of the suit property as to the facility available nearby is not before the Court. Nothing precluded the petitioner from placing any material on record for fixing reasonable compensation. Having not produced any material, he cannot complain about the order fixing compensation based on the material produced by the plaintiffs. After considering the material on record, the learned District Judge observed that since there is no evidence as to present situation of structure of the suit property, it would be appropriate if the amount of Rs.25,000/- per month is fixed for occupation charges / compensation.

11. Mr. Ransubhe relied upon decision of this Court in **Chandrakant Dhanu** (*supra*). In the light of the aforesaid discussion, I do not find that the said decision in any way advances the case of the petitioner. For the reasons recorded in paragraphs 5 and 6 of the impugned order, I do not find that the learned District Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

12. At the request of Mr. Ransubhe, the time stipulated in clause 2(b) of the operative part of the order dated 18.09.2018 is extended for a period of one month from today with express understanding that no further extension shall be sought and granted. Order accordingly.

(R. G. KETKAR, J.)