

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13094 OF 2018

Ismail Ahmed Memon

.. Petitioner

vs.

1. The State of Maharashtra (deleted)

2. Shabnam Ali Mohammed Memon

and ors

.. Respondents

Mr. Asif Memon i/b Anam Fatima for the Petitioner.

Mr. Umar Kazi a/w. Mr. Ahmed Kazi for the Respondent No.2.

CORAM : M. S. SONAK, J.

DATE : 29 NOVEMBER 2018.

ORAL JUDGMENT :-

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the portion of the order dated 11th July 2018 which determines the compensation at the rate of Rs.5000/- per month and directs the petitioner to pay such compensation over and above monthly rent from the date of application, i.e., 26th April 2018, as a condition for the petitioner's continuing in possession of the suit property despite decree of eviction dated 31st July 2006 being made against the petitioner.

4] Mr. Asif Memon, the learned counsel for the petitioner, points out that from the location and the nature of the suit premises, the compensation amount could never have exceeded Rs.2500/- per month. He submits that the suit premises are situated at Shahpur and only the portion of the same are used for commercial purposes, i.e., Cycle repairs. He submits that even the suit premises are in need of serious and major repairs. Since all these aspects have not been considered, the determination of compensation at the rate of Rs.5000/- per month warrants interference.

5] Mr. Memon further submits that in terms of the ruling in ***M/s.Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited - 2005 (1) SCC 705***, the Appeal Court clearly erred in making a direction to pay the amount of compensation to the landlord. In terms of the said ruling, the direction could have been at the higher side to deposit such amount and thereafter, it was for the landlord to make out an exceptional case warranting withdrawal. He points out that if ultimately the petitioner succeeds in the appeal, the petitioner is not liable to pay any amount over and above the contractual tenancy rent. He therefore submits that the impugned order is vulnerable on this ground as well.

6] Mr. Umar Kazi, the learned counsel for the respondent No.2-landlord, points out that the respondent – landlord had sought for a direction for payment of monthly compensation with effect from the date of decree of eviction, i.e., 31st July 2006. He submits that in terms of the ruling in *M/s. Atma Ram Properties (supra)* the compensation amount is required to be deposited from the date of eviction decree and therefore, the Appeal Court was not right in directing the payment of compensation amount only from the date of application, i.e., 26th April 2018. He submits that since these are proceedings under Article 227 of the Constitution of India, this Court ought to correct this obvious error in the impugned order.

7] Mr. Umar Kazi also points out that the area of the suit premises is about 720 sq. ft. and the portion of the same is admittedly being used for commercial purposes. Therefore, the determination of compensation at the rate of Rs.5000/- is appropriate and warrants no interference.

8] Although, *prima facie*, the determination of compensation at the rate of Rs.5000/- per month appears to be on the higher side and the compensation could have been determined in the range of

Rs.3000/- to Rs.3500/- per month, there is really no case made out to interfere with the determination of the compensation in the peculiar facts and circumstances of the present case.

9] In terms of *M/s. Atma Ram Properties (supra)* , if the decree for eviction is to be stayed, then, the appellant -tenant can be directed to deposit the compensation corresponding to the market rate. Normally, such a direction has to be issued with effect from the date of eviction decree or at least, with effect from the date on which interim relief staying the execution of the eviction decree is granted.

10] In the present case, the date of eviction decree is 31st July 2006. The same was stayed on 5th June 2007. However, the direction in the impugned order is for payment only with effect from the date of the application made by the landlord which is 26th April 2018. Therefore, even if compensation amount were to be modified to say Rs.3000/-, it would then be necessary to direct deposit with effect from at least 5th June 2007, which would be a considerable amount. Now that the petitioner had secured significant benefits, it is really not necessary to interfere with the determination of the

compensation amount at this stage.

11] However, the direction for payment of compensation amount to the respondent – landlord warrants interference. In the case of *M/s. Atma Ram Properties (supra)*, the Apex Court has clarified that in the normal course there must be a direction to deposit the amount before the Appeal Court. Only if the landlord makes out an exceptional case, such landlord can be permitted to withdraw the deposited amount and that too subject to grant of appropriate securities. This is because if the appellant – tenant ultimately succeeds in the appeal, then liability of such appellant – tenant is only towards payment of contractual tenancy rent and not market rate. The impugned order insofar as it directs the payment of compensation amount to the landlord therefore warrants interference.

12] Accordingly, this petition is disposed of with the following order:

(a) The determination of the compensation amount at the rate of RS.5000/- per month is not interfered with;

(b) However, the direction that such amount of compensation be paid to the respondent-landlord is set aside and substituted with the direction that the petitioner deposits compensation at the rate of Rs.5000/- per month over and above monthly rent from the date of respondent's application dated 26th April 2018 till the decision in the appeal. The time limit for deposit is extended by four weeks from today. The contractual monthly rent can be withdrawn by the landlord, if he so desires;

(c) Rule is disposed of in the aforesaid terms.

13] In the peculiar facts and circumstances of the present case, the Appeal Court is directed to dispose of the appeal as expeditiously as possible and in any case on or before 31st March 2019;

14] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)