

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 639 OF 2017

Smt. Neela N. Tambwekar
(deceased) through
L.Rs. Dr. Naresh R. Tambwekar
and ors. ..Applicants/Petitioners
vs.
Smt. Khairunissa S. Bilawala .. Respondent.

Mr. Mohit Bhansali for the Applicants/Petitioners.
Mr. Jayesh Vyas a/w. Mr. Yogesh Gaikwad for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 10 DECEMBER 2018.

P.C. :-

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] Mr. Bhansali, learned counsel for the applicants/petitioners, submits that the valuation report of Harshad S. Maniar, upon which reliance has been placed by the Appeal Court is totally defective. He submits that it is obvious that the Chartered Engineer has not even inspected the premises because he states that the premises are on the second floor when in fact the suit premises are on the first floor. He further submits that the report was prepared in the year 2010

and it failed to take into consideration the present status of the building. He points out that the building is in dilapidated condition and even notices to this effect have been issued.

4] Mr. Bhansali points out that the Appeal Court has also erred in relying upon the orders made in Appeal Nos.130 and 131 of 2013, particularly because in the said cases there was material to indicate that stilt portion was used for commercial purposes.

5] Mr.Bhansali submits that since there is a bar to transfer the portions under the stilt, the same is incapable of any accurate valuation. He therefore, submits that determination of Rs.5200/- is quite exorbitant particularly since the petitioners has used the stilt portion only for parking of the cars. For all these reasons, Mr.Bhansali submits that the impugned order warrants interference.

6] Mr. Vyas, the learned counsel for the respondent, supports the impugned order on the basis of the reasoning reflected therein.

7] The rival contentions now fall for determination.

8] In the present case, even if we were to completely exclude from consideration of the report prepared by Harshad Maniar, the fact remain that in respect of premises located in the same building and consequently having some amenities, the rate of Rs.16/- per sq. ft has already been determined wayback in the year 2014. There is really no reason not to accept this rate particularly because the premises ad-measures about 591 sq. ft and are admittedly situated at Dadar, i.e., very close to Shivaji Park Chowpatty, Sena Bhavan Municipal Swimming Pool, Shivaji Park Maidan and Plaza Theater etc.

9] The premises are on the 1st floor and have amenities of car parking on stilt. Therefore, even if some discount is to be offered for the reasons that the building is itself quite old, there is really no good reason to depart from the rate of Rs.16/- per sq. ft as in the year 2014. Since, determination has to be undertaken in the year 2017 when the decree for eviction came to be made, there is nothing unreasonable in the Appeal Court taking valuation at Rs.20/- per sq. ft and on the said basis determining market rent at Rs.11,820/- per month in respect of the suit flat.

10] Thus, even if the contention of the petitioners as regards the valuation report is to be accepted and the valuation report is to be

completely excluded from consideration still, there is no reason to interfere with the determination of Rs.11,820/- per month as a market rent.

11] Insofar as the stilt area is concerned, the learned counsel for the petitioners asserts that the determination in the earlier matter was in a situation where stilt area was being used for some commercial purpose. In the present case, the petitioners assert that the petitioners are using the stilt area only for car parking. This is relevant consideration, which appears to have been ignored by the Appeal Court. On this basis, the market rent in respect of stilt area is required to be scaled down from Rs.5200/- to Rs.3000/- per month. This modification is necessary taking into consideration the distinguishing feature of present case.

12] Accordingly, Rule is made partly absolute in this petition and the same is disposed of by the following order:

- (a) The impugned order dated 16th August 2017 in respect of it determines the market rent of the flat at Rs.11,820/- per month is not interfered with;
- (b) The impugned order dated 16th August 2017 insofar as it determines market rent payable in respect of stilt area at the

rate of Rs.5200/- per month is however, set aside and this amount is substituted with the amount of Rs.3,000/- per month;

(c) Rest part of the impugned order dated 16th August 2017 is not interfered with and shall remain the same;

(d) The interim order granted earlier is now vacated. However, period of three months is granted to the petitioners to deposit the arrears consistent with the present order;

(e) There shall be no order as to costs.

(f) All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)