

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.537 OF 2018

Chandaben Jayantilal Udani
(since deceased through legal heirs) ...Petitioners

vs.

Hansa Villa Realty Pvt. Ltd. and Another ...Respondents

Mrs. Vasanti Dighe, for the Petitioners
Mr. Jaydeep Deo, for Respondent No. 1..

CORAM : M. S. SONAK, J.

DATE : NOVEMBER 27, 2018

ORAL JUDGMENT

. Heard Mrs. Vasanti Dighe, learned counsel for the Petitioners and Mr. Jaydeep Deo, learned counsel for Respondent No. 1 – contesting Respondent. The presence of Respondent No. 2 is not necessary for the purpose of deciding the issue which arises in the present Petition.

2. The Petitioners – tenant challenges order dated 21st November, 2017 made by the Appeal Court to the extent such order directs the Petitioners to deposit compensation of Rs. 34,000/- p.m. from the date of eviction decree i.e. 21st September, 2016 as a condition for grant of interim reliefs staying the

execution of the eviction decree. Mrs. Dighe, learned counsel Petitioners points out that the suit premises admeasures 400 square feet located at Matunga in a building which is more than 80 years old. She points out that there is no 24 hours water supply and there is no lift facility for the building. She submits that the suit premises therefore could never even compared to the premises which was the subject matter of leave and license agreement produced by the Respondent- landlord. She submits that the instances referred to by the Respondent- landlord relates to the premises having a greater area and the premises which are situated in new high rise buildings having modern amenities. Without prejudice to her contention that even mesne profit in respect of such premises should be not more than Rs. 1,000/- p.m, On the basis of instruction and without prejudice, she submits that compensation may be fixed at Rs. 8,000/- to 10,000/-.

3. Mr. Jaydeep Deo, learned counsel for Respondent No. 1 – landlord points out that the instances produced on record, are in respect of the premises which are located hardly 3 to 5 minutes walking distance from the suit premises. He points out that in the absence of any material produced by the Petitioners, the Appeal

Court was entirely justified in relying upon the instances and determining the compensation of Rs. 34,000/- p.m. Again without prejudice, on the basis of instruction, he submits that the compensation be reduced at the highest to Rs. 30,000/-. He point out that in the affidavit in rejoinder filed on behalf of the Petitioners, there was no mention about the absence of toilet or lift facilities in the suit premises. He therefore submits that such contention cannot be taken into consideration.

4. Rival contention now fall for determination.

5. There is no serious dispute that the suit premises are in a building which is almost 80 years old. There is also no dispute that the area of the suit premises is 400 sq. fts. There is no reason to doubt the submission that the suit premises do not have any attached toilet or no amenities like lift etc. In contrast, the instances which are relied upon the impugned order, appear to premises in new building. In fact Ms. Dighe contended that leave and licence was in respect of furnished apartment. There can be no serious dispute that the apartments of this nature have attached toilets apart from other modern amenities like regular water supply

and lift. The rental in respect of one of the premises comes to Rs. 80/- per sq.ft. and other Rs. 95/- per sq. ft. The Appeal Court without appreciating the obvious differences between the instances produced and the nature of the suit premises, has determined the compensation of Rs. 34,000/- p.m. This is obviously excessive.

6. In determining the compensation, the Court has to see that the compensation is not so excessive as to virtually render the right of the tenant to appeal against the decree of eviction illusory or nugatory. Severe hardship will occasion the tenant, on account of his inability to make such excessive deposits, he is required to vacate said premises, even though his Appeal is pending consideration. Therefore, the balance has to be struck between the rights of the tenant to effectively prosecute his Appeal and the right of the landlord to be suitably compensated if ultimately it is found that the tenant's Appeal lack merits or was frivolous.

7. In the facts of the present case, compensation of Rs. 15,000/- p.m. would meet the ends of justice. Such compensation amount would also be consistent with the principles laid down by the Hon'ble Apex Court in ***Atma Ram Properties (P) Ltd. vs.***

Federal Motors (P) Ltd. (2005) 1 SCC 705. This amount is determined taking into consideration the area of the suit premises, factum that the building in which suit premises are located is 80 years old and further fact that the suit premises have no amenities like toilets or lift facilities. Ms. Dighe submitted that on at least two occasions, the Petitioner had to repair the suit premises at their own expense. Taking into consideration all these circumstances, the compensation can be determined at Rs. 15,000/- p.m.

8. The impugned order is accordingly modified and compensation amount of Rs. 34,000/- p.m. is substituted with the compensation amount of Rs. 15,000/- p.m.

9. The rest of the conditions in the impugned order are not interfered with. However, if there are any arrears in terms of the impugned order, as now modified, the Petitioner is granted two months time to make deposits before the appropriate Court, as directed in the impugned order.

10. The rule is made partly absolute to the aforesaid extent.

11. There shall be no order as to the costs.
12. All concerned to act on the authenticated copy of this order.

(M. S. SONAK, J.)