

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAW] No.1003 of 2018
in
Writ Petition No.6009 of 2017

Mr. Babulal Shivram Arjapure
vs.
Satyanarayan s/o Champalalji Pottdar & others

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Shri N.G. Jetha, Advocate for the Applicant/Respondents.
Shri S.P. Bodalkar, Advocate for the Respondent.

CORAM : S.B. SHUKRE, J.
DATE : 26th JUNE, 2018.

01] This is the case, wherein the possession given to the landlord in execution of decree of eviction has been restored back to the tenant, on the order passed by this Court on 14/09/2017 and this order was passed by allowing the application filed in this regard by the tenant. In the application filed for seeking restoration of the possession, the tenant did not voluntarily conceal about the payment of occupation charges, although, in all fairness any prudent person would expect such a tenant to do so. It is not in dispute that the tenant is paying monthly rent of Rs.905/- which was fixed way back in the year 1970. The landlord has submitted that the tenant should at least pay Rs.10,000/- per month as

occupation charges. Considering the fact that the agreed rent was of the year 1970, about 48 years back, the proposal of the landlord having regard to the devaluation of rupee in the present age cannot be considered to be unreasonable or too inexorbitant to be afforded in a reasonable manner by the tenant. This is all the more so because the tenanted premises are being used for commercial purpose. Unfortunately, the tenant is not ready to even accept the proposal of payment of occupation charges at the rate of Rs.10,000/- per month.

02] The learned Counsel for the tenant also presses into service the decision given by the learned Single Judge of this Court in the case of Chandrakant Dhanu and another vs. Sharmila Kapur and others - 2009(2) Mh.L.J., wherein it has been observed that the basic burden to prove and support the case of reasonable compensation/mesne profit lies upon the landlord. According to the learned Counsel for the tenant, this basic burden has not been discharged even in *prima facie* manner by the landlord. The argument at this stage appears to be fallacious. The devaluation of Indian rupee is a fact of which judicial notice can be

taken. The value of the gold which was prevailing in the year 1970 has increased many fold. The quantity of the gold that could have been purchased in the year 1970 for Rs.905/- today cannot be even imagined to be purchased for Rs.905/-. The salaries in the private and public sector have increased many times over. Minimum wages have also been revised to substantial level. In this situation, it cannot be accepted that there are no circumstances available on record resort to which can not be made for determining at this stage or at least in a *prima facie* manner, the occupation charges to be paid in a reasonable manner and at enhanced rate by the tenant.

03] In the background of what is discussed in the previous paragraphs, I am of the view that the amount of Rs.10,000/- as occupation charges at least at this stage would be a reasonable amount to be paid by the tenant for occupying the tenanted premises continuously.

04] Accordingly, the application is partly allowed. It is directed that the tenant shall pay the occupation charges at the rate of Rs.10,000/- per month inclusive of

Rs.905/-, the agreed rent from the date on which the possession of the tenanted premises came to be restored to the tenant. The occupation charges shall be deposited in this Court on or before 5th day of every month and as regards the deposit of the arrears of the occupation charges, eight weeks' time is granted to the tenant to do so. On such deposits being made, the landlord shall have liberty to withdraw the same. The application is disposed of accordingly.

JUDGE

**sandesh*