

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 955 OF 2016

Shri Adinath Vishwanath Kadam

... **Petitioner*****Versus***

Shri Habib Hussein Karmali Patel and Ors.

... **Respondents.**

.....

Mr. Nitin Deshpande for the Petitioner.

Mr. P. J. Thorat for the Respondent No.1.

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CORAM : A. S. GADKARI, J.**DATE : 20th NOVEMBER, 2019****P. C. :**

1. By the present petition under Article 227 of the Constitution of India, the petitioner has impugned Order dated 17th December 2015 passed by the Appellate Bench of the Small Causes Court, Mumbai below Exhibit-7 in Miscellaneous Application No. 384 of 2014, thereby allowing the application for grant of stay to the execution of decree dated 29th October 2009 passed in T.E. Suit No. 22 of 2006 by the Small Causes Court, Mumbai, directing the petitioner and other two defendants to hand over possession of the suit premises, more specifically mentioned in the body of the decree dated 29th October 2009.

2. Heard Mr. Deshpande, learned counsel for the petitioner and Mr. Thorat, learned counsel for the respondent No.1. Perused the entire record annexed to the petition.

3. The respondent Nos. 2 and 3 are the original defendant Nos. 1 and 3 against whom the decree has been passed by the Court.

Mr. Deshpande, learned counsel for the petitioner submitted that, the petitioner is in actual use and possession of 120 sq. ft. land out of the total suit land and therefore imposition of compensation to the tune of Rs. 15,000 (Rupees Fifteen Thousand Only) per month for the total plot of land, on the presumption that it is in possession of petitioner is erroneous. He further submitted that, the Appellate Court has committed an error by fixing exorbitant compensation for the suit premises. He submitted that, as a matter of fact, the petitioner is not in a possession of rest of portion of the suit premises mentioned in the decree and therefore also he can not be made liable to pay compensation for the entire plot of land mentioned in the decree. He therefore prayed that, the impugned Order dated 17th December 2015 may be set aside by allowing the present petition.

4. Per contra, Mr. Thorat, learned counsel for the Respondent No.1 vehemently opposed the petition and submitted that, the Appellate Court has passed a reasonable Order, which need not be interefered by this Court in its writ jurisdiction under Article 227 of the Constitution of India.

5. Perusal of record would indicate that, the Small Causes Court, Mumbai has passed a Decree against the petitioner and two other defendants on 29th October 2009. In an application preferred by the

petitioner / original defendant No.2 for grant of stay to the execution of the said decree, the Trial Court by applying the principles enumerated by the Hon'ble Supreme Court in the case of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.* reported in (2005) 1 SCC 705 and *State of Maharashtra & Anr. Vs. Supermax International Pvt. Ltd.* reported in 2009 (5) Bom. C.R. 556, has fixed the compensation for the suit premises of 15,000/- per month on ad-hoc basis, from the date of passing of the Judgment and Decree dated 29th October 2009 up to 30st November 2015.

5. It appears that, there is no error committed while applying the said ad-hoc compensation by the Appellate Court. The guidelines enumerated by the Hon'ble Supreme Court in the aforesaid two decisions have been properly applied by the Appellate Court.

6. After perusing the impugned Order, this Court is of the considered view that, there is no error either in law or on facts committed by the Appellate Court.

7. In view thereof, the Petition being devoid of merits is accordingly dismissed.

(A. S. GADKARI, J.)