

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2177 OF 2019

Smt. Jyoti Praful Chheda

...Petitioner

Versus

Mrs. Hiravanti Kusumkant Nagda

And others

...Respondents

....

Mr. Rakesh Agrawal, Advocate for the Petitioner.

Mr. Vimlesh Singh, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 18th FEBRUARY, 2019

P.C.

1. Not on board. At the request of Mr.Agrawal taken up for admission.
2. Heard Mr. Rakesh Agrawal, learned counsel for the petitioner and Mr. Vimlesh Singh, learned counsel for the respondents, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 18.12.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibit-9 in (A-1) Appeal No.343/2017 arising from R.A.E. Suit No.685/1025 of 2010. By that order, the Appellate Court allowed the application Exhibit-9 made by the petitioner under Order XLI Rule 5 of

Code of Civil Procedure, 1908 (for short, 'C.P.C.') for staying the execution and operation of the judgment and decree dated 29.8.2017 passed by the learned Judge, Court Room No.7 of the Court of Small Causes at Mumbai in R.A.E. Suit No.685/1025 of 2010. The Appellate Court stayed the eviction decree subject to following conditions :

- (i) The petitioner shall deposit the amount of compensation at the rate of Rs.17,000/- per month from the date of decree i.e. 29.8.2017 till December, 2018 within two months from date of the order.
- (ii) The petitioner shall deposit further monthly interim compensation at the rate of Rs.17,000/- per month in the Court before 10th day of each succeeding month till final disposal of the suit.
- (iii) The Office of Appellate Court was directed to invest the amount if deposited by the petitioner with any Nationalized bank in fixed deposit scheme for one year and thereafter for the similar period till the disposal of the appeal.
- (iv) The petitioner was restrained from creating or handing over the possession of the suit premises to any third party till disposal of the appeal.

4. In support of this Petition, Mr. Agrawal has invited my attention to :

- (i) leave and license agreement dated 19.4.2016 in respect of Flat No.2, admeasuring 480 sq. ft. The licensee therein had agreed to pay compensation of Rs.17,000/- per month for

the first twelve months and Rs.17,850/- for the next twelve months.

- (ii) Leave and licence agreement dated 1.3.2016 in respect of flat No.8, admeasuring 350 sq. ft. carpet area. Under that agreement, the licensee therein agreed to pay sum of Rs.18,000/- per month for the first year i.e. from 1.3.2016 to 28.2.2017 and Rs.19,800/- per month for the second year i.e. from 1.3.2017 to 1.3.2018.
- (iii) Affidavit-in-rejoinder filed by the petitioner and in particular paragraph-4 thereof.

5. Mr. Agrawal submitted that the building where the suit premises is situate is surrounded by slum area. There are various leakages in the suit premises due to damage in the outer structure of the building which the respondent-landlord failed to maintain. He invited my attention to the photographs which spell out the condition of the building, the surrounding and the flat. He submitted that the landlord has suppressed said fact and the leave and licence agreements relied upon by him are mere eye wash with a view to creating false evidence. Said agreements were never acted upon.

6. Mr. Agrawal further submitted that flat No.8 is well-furnished and does not have problem of leakage and dampness. He

submitted that the Appellate Court, however, ignored this material while fixing the interim compensation. He submitted that in the case of **Atma Ram, Properties (P) Ltd. V. Federal Motors (P) Ltd., (2005) 1 SCC 705** as also **State of Maharashtra and another Vs. Super Max International Private Limited and others, (2009) 9 Supreme Court Cases 772**, the Apex Court held that the amount of compensation to be fixed by the Appellate Court while granting stay to the eviction decree should be reasonable so as to enable the tenant to pay that compensation and that the Court has to exercise restraint and should not fix any excessive, fanciful or punitive amount of compensation.

7. On the other hand, Mr.Singh supported the impugned order. He submitted that the respondents have produced the leave and licence agreements in respect of the premises situate in the same building where the suit premises is situate. As against this, the petitioner has not produced any material for fixing reasonable compensation. The contentions raised in the affidavit-in-rejoinder are not substantiated by the petitioner. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the petitioner did not produce

any material for fixing reasonable compensation. As against this, the respondents produced leave and licence agreements in respect of the premises situate in the same building where the suit premises is situate. The petitioner filed affidavit-in-rejoinder and in paragraphs-4 and 5 it was contended thus:

- “4. I submit that the suit building “Nagda Niketan” is more than 60 years old. The building does not have lift and not maintained by the original plaintiff / landlord. I submit that subject building is surrounded by the slums area. There are various leakage in the flat due to damage in the outer structure of the building – which landlord failed to maintain. Hereto annexed and marked Exhibit A Coll. is certain photographs, which clearly spell out the condition of building, surrounding and flat. The Respondent no.4 had conveniently suppressed said fact from this Hon'ble Court and came with the leave and license agreements. I submit that said agreements are eye wash and invented at the behest of the original Plaintiff to created false evidence. I say that said agreements were never acted upon in true sense.
5. I say that the area of the Flat No.8 is around 440 sq. ft. carpet area and not 350 sq. ft. carpet area. Further, the said Flat No.8 is well furnished and does not have the problem of leakage and dampness. On the contrary the photographs annexed at Exhibit “A” speaks loud about the condition of the suit premises.”

9. The petitioner has not produced any material to substantiate said contention. If at all there was problem of leakage in the suit premises, it is expected from the tenant to produce some

material such as complaints with the landlords for carrying out repairs. It is not as if that in such a case the tenant is without any remedy. If after giving notice the landlord fails to carry out the repairs, he can always approach the court for carrying out repairs. However, no such material is produced on record. Mere *ipse dixit* of the tenant cannot be accepted about the condition of the building more so when the flats in the same building have been given on leave and license basis.

10. In view thereof, I do not find that the Appellate Court committed any error while fixing interim compensation. Hence, the petition fails and the same is dismissed. The time stipulated in clause (2) of the operative part of the impugned order is extended by a period of two months from today with express understanding that no further extension shall be sought for and granted by this Court. Order accordingly.

(R. G. KETKAR, J.)