

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3477 OF 2019

Kanaben Ravjibhai alias Lavjibhai Mistry	]	Petitioner
Vs.		
Sambhuprasad Girdharilal Dave	]	
(since deceased through Legal Heirs)	]	
1(A) Kamlagauri Sambhuprasad Dave	]	
and others.	]	Respondents

.....

Mr. Deepak T. Raut, Advocate for the Petitioner.
Mr. Nitin H. Shukla, Advocate for Respondents No.1(A) to 1(E).

.....

CORAM : R.G. KETKAR, J.

DATE : 13th JUNE, 2019.

P.C.

Heard Mr. Raut, learned Counsel for the petitioner and Mr. Shukla, learned Counsel for respondents No.1(A) to 1(E), at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter, referred to as 'defendant No.1' has challenged the judgment and order dated 28th November, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 7 in Appeal No.50 of 2018. By that order, the Appellate Court allowed the application filed by defendant No.1 under Order-XLI, Rule-5 of the Code of Civil Procedure, 1908 (for short 'C.P.C') and stayed eviction decree dated 3rd March, 2018 passed by the learned trial Judge in R.A.E & R Suit No.3244 of 1983 till disposal of the appeal subject to the condition of defendant No.1 depositing compensation of Rs.9,000/- per month in the Court on or before 10th day of each month from

the date of the decree till decision of the appeal. The arrears are to be deposited either in lumpsum or in three monthly installments from the date of the order. Upon deposit of the amount, the Registry was directed to invest the amount in a Nationalized Bank in Fixed Deposit Account for initial period of one year and thereafter for a similar period of one year each.

3. In support of this Petition, Mr. Raut contended that the suit premises is situate in a chawl. It is a residential premises admeasuring about 150 square feet. The Appellate Court has fixed compensation @ Rs.9,000/- per month which is high, oppressive and exorbitant. He, therefore, submitted that the Petition requires consideration.

4. On the other hand, Mr. Shukla supported the impugned order. He submitted that in the evidence, defendant No.1 admitted that area of the suit premises is 175 square feet. That apart, he submitted that the learned trial Judge has decreed the suit on the ground of unlawful subletting by defendant No.1 in favour of defendant No.2. He has taken me through the findings recorded by the learned trial Judge in paragraphs 158, 158 and 160 to contend that the learned trial Judge after appreciating the evidence on record, recorded a finding that defendant No.2 is in possession of the suit premises. Thus, defendant No.1 is profiteering. That apart, defendant No.1 did not produce any material for fixation of reasonable compensation. As against this, the respondents have produced on record several instances of leave and licence agreement showing that reasonable compensation would be between 15,000/- and 20,000/-. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As

mentioned earlier, one of the grounds on which the decree was passed against the defendants is unlawful subletting. Upon perusing the findings recorded by the learned trial Judge while decreeing the suit, *prima facie*, it is evident that the suit is decreed on the ground of unlawful subletting. Defendant No.2 is found in possession of the suit premises. That apart, while fixing reasonable compensation, defendant No.1 did not produce any material. As against this, the plaintiffs have produced several instances of leave and licence agreements as is evident from paragraph 12 of the impugned order. In paragraph 15, the Appellate Court recorded that the suit premises is situate in a prime location of the city where all civic amenities are available. Considering area and location of the suit premises, the Appellate Court found it appropriate to fix compensation @ Rs.9,000/- per month.

6. In view thereof, I do not find that the Appellate Court committed any error in passing the impugned order. Hence, the Petition fails and the same is dismissed. Time for depositing the arrears of compensation as per the impugned order is extended by 4 weeks from today. The parties are at liberty to file application before the Appellate Court for disposal of the appeal in a time bound manner. If such application is made, the Appellate Court will pass the appropriate order. Order accordingly.

[R.G. KETKAR, J.]