IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8060 OF 2018

Gautam C. Bhansali	…	Petitioner
Vs.		
Madhu Bhagwandas Sharma	…	Respondent

Mr. Khan Javed Akhtar for Petitioner.
Mr. Dharam Sharma a/w. Ms Uma Sharma i/b. Dharam & Co. for Respondent.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 6, 2019

P.C. :

Heard Mr. Akhtar, learned Counsel for petitioner and Mr. Sharma, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 27.02.2018 below exhibit-10 in Appeal No.229 of 2014 passed by the Appellate Bench of the Small Causes Court. By that order, the Appellate Court disposed of the application exhibit-10 filed by the respondent seeking mesne profits @ Rs.1,44,000/- per month from the date of the decree till the final disposal of the appeal

3. The respondent had instituted R.A.E.Suit No.245/398 of 2009 for eviction of the petitioner. The Suit was decreed on 30.04.2014. Aggrieved by that decision, petitioner preferred Appeal No.229 of 2014. The petitioner also took out application for stay of execution of decree. The respondent made statement that decree will not be executed until disposal of the appeal. On the basis of the statement made by the respondent, application for stay was disposed of without imposing any condition. The respondent thereafter took out application in February

2015. The petitioner filed reply on 05.07.2017. The petitioner relied upon the valuation report of Amiraj Associates. The respondent relied upon the valuation report of Sanjiv Hate. It is not in dispute that the suit premises are shops No.1, 2 and 9 on the ground floor of building known as 'Sudama Building' situate at Bhuleshwar Division, Panjarpole 1st Lane, C. P. Tank Road, Mumbai 400 004. The Valuer appointed by the respondent had certified that the carpet area of these shops is 638.52 sq.ft. The Valuer appointed by the petitioner certified that the carpet area of the suit premises is 602 sq.ft. By the impugned order, the Appellate Court had directed the petitioner herein to deposit the interim compensation @ Rs.50,000/- per month from the date of the decree i.e. from 30.04.2014 during the pendency of the appeal. It is against this order, petitioner has instituted the present Petition.\

4. In support of this Petition, Mr. Khan submitted that the Valuer appointed by the petitioner has suggested that Rs.33,000/- per month is the reasonable compensation. The petitioner is ready and willing to deposit the interim compensation @ Rs.33,000/- per month. He invited my attention to paragraphs 13 and 14 of the impugned order. In paragraph 13, the Appellate Court discussed the valuation report submitted by the respondent. In paragraph 14, the Appellate Court considered the valuation report submitted by the petitioner. He submitted that the valuation report submitted by the respondent was not accepted by the Appellate Court. The Appellate Court, therefore, should have accepted the valuation report submitted by the petitioner. The Appellate Court, however, did not fix the compensation on the basis of the valuation report submitted either by the petitioner or by the respondent and fixed the compensation for the reasons recorded in paragraph 16 of the impugned order. He submitted that the compensation fixed @ Rs.50,000/- is highly excessive and oppressive and is not a reasonable compensation. He, therefore, submitted that

Petition requires consideration.

5. On the other hand, Mr. Sharma submitted that the Valuer appointed by the respondent suggested that the reasonable compensation would be Rs.95,778/- per month. As against this, the Appellate Court has awarded Rs.50,000/- per month. The Appellate Court gave reasons in paragraph 15 for discarding the valuation report submitted by the petitioner. He submitted that for the reasons recorded in paragraph 16, no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that respondent had filed Suit for recovery for possession of shops No.1, 2 and 9. The carpet area of these shops is 638.52 sq.ft. The Suit filed by the respondent was decreed on 30.04.2014. The petitioner took out application for stay. The respondent made statement that pending the appeal, he will not execute the decree of eviction. The Appellate Court accordingly disposed of the stay application. In my opinion, the Appellate Court should have fixed the interim compensation at the time when respondent made statement that he will not execute the decree. Be that as it may, the respondent filed application in 2015 for fixing interim compensation and produced the valuation report. The valuation report submitted by the respondent shows that the Valuer has suggested Rs.95,778/- per month. As against this, the valuation report submitted by the petitioner shows reasonable compensation of Rs.33,000/- per month. In paragraph 15, the Appellate Court gave reasons for discarding the valuation report submitted by the petitioner. In paragraph 16, the Appellate Court noted that the suit premises is situate on first Parjarpole Lane, Bhuleshwar Division, Mumbai 400 004. The petitioner is carrying on the business of steel trading from the suit premises. It is evident that the suit premises is

situate in a prominent business place for steel traders. The Appellate Court, therefore, observed that the suit premises is suitable for business, which is conducted by the petitioner at present. After comparing both the valuation reports as also keeping in mind the area, locality, accessibility and availability of road, fair market rent of the suit premises, the Appellate Court fixed the fair market rate @ Rs.50,000/- per month. I do not find that the Appellate Court committed any error in fixing the interim compensation @ Rs.50,000/- per month. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

7. At this stage, Mr. Khan prays for 6 weeks time for depositing the arrears of compensation and assures that petitioner will not seek further extension of time. Mr. Sharma submits that the impugned order was passed on 27.04.2018. He, therefore, opposes extension of 6 weeks.

8. In view thereof, notwithstanding dismissal of the Petition, time stipulated in clause 1(b) of the operative part of the order for clearing the arrears of compensation from the date of the decree i.e. 30.04.2014 to February 2018 is extended by 6 weeks with clear understanding that no extension shall be sought for and granted. Order accordingly.

(R. G. KETKAR, J.)

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