

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.826 OF 2019
IN
WRIT PETITION NO.13836 OF 2018

M/s. Property Builders through its partners
Ketan D. Shah and others ... Applicants
Vs.
Pilky Thermoplast Pvt. Ltd. ... Respondent

Mr. Pradip R. Kadam a/w. Mr. Gaurang C. Jhaveri for Applicants.
Mr. Rakesh Reddy for Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 29, 2019

P.C. :

Not on Board. At the request of Mr. Kadam, taken up in the production Board.

2. Heard Mr. Kadam, learned Counsel for the applicants and Mr.Reddy, learned Counsel for the respondent.

3. This Application is taken out for modification of the order dated 18.03.2019 passed by this Court in Writ Petition No.13836 of 2018.

4. Mr. Kadam submitted that several factual errors have crept in the order dated 18.03.2019. He has enlisted those errors as under:

- a. In the entire order, wherever figure '30%' appears, the same may be substituted by '**50%**'.
- b. The amounts, namely, Rs.7,25,801.97/- and Rs.8,79,090.71/- appearing in paragraph 5 may be substituted by **Rs.5,18,429.50/-** and **Rs.6,71,700/-** respectively;
- c. The year 1962 mentioned in paragraph 6 may be substituted by

1971, consequently, the figure 60 appearing in the same paragraph may be substituted by **40**;

- d. The amount of Rs.8,79,070/- appearing in paragraph 8 may be substituted by **Rs.6,71,700/-**;
- e. The amount of compensation @ Rs.8,68,750/- appearing in paragraph 10 may be substituted by **Rs.6,71,700/-**;
- f. The compensation amount @ Rs.8,68,750/- appearing in paragraph 11.a(i) may be substituted by **Rs.6,71,700/-**. Consequently the amount mentioned in figures may also be substituted by **(Rupees Six Lakhs Seventy One Thousand Seven Hundred only)**.

5. Mr. Reddy accepts this position.

6. In view thereof, the order dated 18.03.2019 stands corrected in the following terms:

- a. In the entire order, wherever figure '30%' appears, the same shall be substituted by **'50%'**.
- b. The amounts, namely, Rs.7,25,801.97/- and Rs.8,79,090.71/- appearing in paragraph 5 shall be substituted by **Rs.5,18,429.50/-** and **Rs.6,71,700/-** respectively;
- c. The year 1962 mentioned in paragraph 6 shall be substituted by **1971**, consequently, the figure 60 appearing in the same paragraph shall be substituted by **40**;
- d. The amount of Rs.8,79,070/- appearing in paragraph 8 shall be substituted by **Rs.6,71,700/-**;
- e. The amount of compensation @ Rs.8,68,750/- appearing in paragraph 10 shall be substituted by **Rs.6,71,700/-**;
- f. The compensation amount @ Rs.8,68,750/- appearing in paragraph 11.a(i) shall be substituted by **Rs.6,71,700/-**.

Consequently the amount mentioned in figures, namely, (Rupees Eight Lakhs Sixty Eight Thousand Seven Hundred and Fifty only) shall be substituted by **(Rupees Six Lakhs Seventy One Thousand Seven Hundred only)**.

7. Order dated 18.03.2019 stands corrected accordingly. Rest of the order remains as it is. Civil Application is disposed of.

(R. G. KETKAR, J.)

CORRECTED ORDER DATED 18.03.2019 READS THUS,

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13836 OF 2018

M/s. Property Builders through Partners and others... Petitioners
Vs.
Pilky Thermoplast Pvt. Ltd. ... Respondent

Mr. Pradip R. Kadam a/w. Mr. Gaurang C. Jhaveri and Mr. Amey
Deshpande for Petitioners.
Mr. Vineet Naik, Senior Advocate i/b. Mr. Rakesh Reddy for Respondent.

CORAM : R. G. KETKAR, J.

DATE : MARCH 18, 2019

P.C. :

Heard Mr. Kadam, learned Counsel for petitioners and Mr. Naik, learned Senior Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 06.09.2018 passed by the learned District Judge-6, Thane below exhibit-5 in Civil Appeal No.45 of 2017. By that order, the learned District Judge allowed the application

made by the respondent / appellant / defendant under Order XLI, Rule 5 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and stayed the eviction decree subject to the following conditions:

- “(i) The execution of judgment and decree in R.C.S.No.2245 of 2012 dated 20.12.2016 passed by Ld. 9th Joint Civil Judge, Senior Division, Thane is hereby stayed till the final decision of appeal subject to depositing compensation in this Court at the rate of Rs.72,395/- (Rupees Seventy Two Thousand Three Hundred Ninety Five only) per month by respondent for the period of 01.10.2012 to 31.03.2018 within a period of 2 (two) months from today and further to pay monthly compensation at the same rate on or before the 10th day of each month pending the hearing and final disposal of the appeal.
- (ii) The amount deposited previously be adjusted in present due amount and in further monthly compensation.
- (iii) The respondent is at liberty to withdraw amount of arrears of compensation between the period of 01.10.2012 to 31.03.2018 at the rate previously fixed at Rs.36,075/- per month. The amount already withdrawn be adjusted in present withdrawal amount.
- (iv) The above amount deposited by respondent to be adjusted with the amount calculated after enquiry regarding mesne profit under O XX R 12 of C.P.C.
- (iv) It is made clear that above stay order would automatically stands vacated on failure to deposit arrears of compensation and further monthly compensation as ordered above within the time stipulated.”

3. Rule. Mr. Reddy waives service for respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Kadam has invited my attention to paragraph 23 of the impugned order. In paragraph 23, the learned District Judge noted that the area of the constructed portion is 16,175 sq.ft. and the open land admeasures 6000 sq.ft. On the basis of material available on record, the learned District Judge was of the view that the

end of justice will be served by fixing annual compensation @ Rs.50/- per sq.ft. for constructed premises admeasuring 16,175 sq.ft. and Rs.10/- per sq.ft. for open land admeasuring 6000 sq.ft. He submitted that on this basis, the learned District held that the reasonable compensation would be Rs.8,68,750/-. The learned District Judge thereafter proceeded to divide it by 12 so as to arrive at monthly compensation. The learned District Judge fixed the monthly compensation of Rs.72,395/-. He submitted that basically, the learned District Judge committed serious error in fixing the reasonable compensation @ Rs.50/- per sq.ft. for constructed premises and Rs.10/- per sq.ft. for open land on annual basis. The learned District Judge ought to have fixed the rate per square feet per month and not per square feet per annum. He also relied upon the Ready Reckoner of the year 2012. The relevant entry reads thus,

Village No. / Zone No.	Thane Taluka	Rate of Vacant LAND per sq.mtr.	Rate of Land + Building in Rs. per Sq.Mtr. Built-up
			Industrial
5	Taluka Thane, Village Panchpakhadi Thane Municipal Corporation		
5/18	5E) Properties facing Mumbai-Agra Express Highway on both the sides.	33000	82800
	Town Planning Scheme No._. Final Plot No./Survey No. Survey No. 14, 32 to 38, 44 to 51, 78 to 81, 85 to 90, 93A, 95, 114, 115, 116, Final Plot No. 25, 26, 31 to 34, 40, 56, 57, 58, 60, 78 to 81, 85, 86, 119 to 122, 289 to 294, 297, 298, 299, 300A, 300B, 300C, 301 to 312, 320, 325, 411 to 416, 418, 419, 421 to 424, 463, 495, 498, 499 to 502.		

5. Mr. Kadam has given calculations as per the Ready Reckoner of the year 2012 and after deducting 50% towards depreciation, the amount comes to Rs.5,18,429.50/- as far as constructed portion admeasuring 16,175/- sq.ft. is concerned and as far as open land admeasuring 600 sq.ft. is concerned, it comes to Rs.1,53,288.74/-. Thus, the learned District Judge ought to have been fixed monthly compensation of Rs.6,71,700/-.

6. As against this, Mr. Naik supported the impugned order. He submitted that the construction was made in the year 1971. The building is thus more than 40 years old and the depreciation permissible for a permanent structure is 70%. If 70% is deducted from 10,36,858.99/-, it comes to Rs.3,11,057.97/-. Alternatively, he submitted that as the learned District Judge has fixed the compensation per annum instead of per month, the matter may be remitted for deciding it afresh.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Paragraph 23 of the impugned order reads thus,

“23] As mentioned earlier that different circumstances come on record as regard to price of suit property, license fee in respect of other properties from same area and admitted fact come on record that in present case constructed area of suit premises is 16175 sq.ft. so also there is open land admeasuring 6000 sq.ft. So in view of other material available on record for the end of justice **annual compensation** at Rs.50/- per sq.ft. for constructed premises admeasuring 16175 and Rs.10 per sq.ft. for open land admeasuring 6000 sq.ft. would be proper calculation. So said calculation would be $16175 \times \text{Rs.}50 \text{ per sq.ft.} = 8,08,750 + 6000 \times \text{Rs.}10 \text{ per sq.ft.} = 60,000$, total would be 8,68,750. Hence, monthly compensation would be $\text{Rs.}8,68,750/12 = 72,395$. So by considering material available on record and additional material produced by both the parties after liberty granted by Honourable High Court, the amount at the rate of Rs.72,395/- per month would be reasonable compensation in respect of suit premises for the period of 01.10.2012 to 31.03.2018 and for further period.”

8. In my opinion, the learned District Judge committed serious error in fixing compensation on annual basis instead of monthly basis. The learned District Judge committed serious error while dividing the figure of compensation of Rs.8,68,750/-. If this error is rectified then the compensation would be Rs.8,68,750/- per month. As against this, if on the basis of the Ready Reckoner, compensation is fixed after deducting depreciation of 50%, it comes to Rs.6,71,700/-. Mr. Naik submitted that

depreciation permissible is 70% and not 50%. As against this, the Ready Reckoner of 2012 deals with rate of depreciation on old buildings, which reads thus,

Completed Age of building in Years	Value in percent after depreciation	
	R.C.C. Pukka Structure /other Pukka Structure	Half or Semi-Pukka Structure
0 to 2 years	100%	100%
above 2 upto 5 years	95%	95%
above 5 upto 10 years	90%	85%
above 10 upto 20 years	80%	75%
above 20 upto 30 years	70%	60%
above 30 upto 40 years	60%	45%
above 40 upto 50 years	50%	30%
above 50 upto 60 years	40%	20%
above 60 years	30%	15%

9. In view thereof, it is not possible to accept the submission of Mr.Naik that 70% should be deducted towards depreciation. The submission of Mr. Kadam that 50% be deducted towards depreciation deserves acceptance. In the case of ***State of Maharashtra Vs. Supermax International Private Limited, (2009) 9 SCC 772***, the Apex Court has observed in paragraph 78 thus,

“78. In the case in hand, the High Court has fixed the amount of Rs. 5,40,000/- per month with reference to the Stamp Duty Ready Reckoner and hence, its reasonableness cannot be doubted. In fairness to Mr. Lalit he did not challenge the fixation of the amount on that ground.”

10. Thus, the Apex Court has held that fixation of compensation with reference to the Stamp Duty Ready Reckoner is reasonable. In view thereof, the learned District Judge should have fixed the reasonable compensation @ Rs.6,71,700/- per month instead of per annum.

11. Mr. Naik submitted that the matter may be remitted for deciding

the application afresh. It is not possible to accede to his request as earlier by order dated 01.08.2018 passed by this Court in Writ Petition No.7650 of 2018, the matter was remitted to the learned District Judge. Hence, the following order:

a. Clause 1(i) of the operative part of the impugned order is modified to the extent of - (I) the rate of compensation and (II) time stipulated for depositing compensation and shall read as under:

(i) The execution of judgment and decree in R.C.S.No.2245/2012 dated 20.12.2016 passed by learned 9th Joint Civil Judge, Senior Division, Thane is hereby stayed till the final decision of appeal subject to depositing compensation in this Court (District Court) at the rate of Rs.6,71,700/- (Rupees Six Lakhs Seventy One Thousand Seven Hundred only) per month by appellant (respondent herein) within a period of 4 (four) months from today and further to pay monthly compensation at the same rate on or before the 10th day of each month pending the hearing and final disposal of the appeal. The amount so deposited by the appellant (respondent herein) shall be invested in any nationalized Bank during the pendency of the Appeal;

b. Rest of the order remains as it is, which is to the following effect:

(ii) The amount deposited previously be adjusted in present due amount and in further monthly compensation.

(iii) The respondent is at liberty to withdraw amount of arrears of compensation between the period of 01.10.2012 to 31.03.2018 at the rate previously fixed at Rs.36,075/- per month. The amount already withdrawn be adjusted in present withdrawal amount.

(iv) The above amount deposited by respondent to be adjusted

with the amount calculated after enquiry regarding *mesne* profit under O XX R 12 of C.P.C.

(v) It is made clear that above stay order would automatically stands vacated on failure to deposit arrears of compensation and further monthly compensation as ordered above within the time stipulated.”

c. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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