

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.747 OF 2016**

**IN**

**CIVIL REVISION APPLICATION NO.117 OF 2015**

M/s. Ronil Developers Pvt. Ltd.

... Applicant

Vs.

Ram Avadh Pandey

...Respondent

.....

Mr. R.S. Kohli, a/w. Mr. Khalid Kazi, for the Applicant (original Respondent).

Mr. B.K. Raje, for the Respondent (original Petitioner).

....

**CORAM : S.C. GUPTE, J.**

**DATED : 16 SEPTEMBER 2019**

**P.C. :**

. Heard learned Counsel for the parties.

2. This civil application seeks an order determining compensation payable in respect of the suit premises. The suit premises are occupied by the Respondent to the civil application, who was an applicant in the original civil revision application and original defendant in the eviction suit. There is a decree of eviction passed against him by two courts below. The civil revision application has been admitted and, accordingly, interim compensation has to be fixed for the suit premises.

3. Such interim compensation can only be on the basis of the

prevailing market rate. There are two reports before the Court for assessing the market rate. One is presented by the Applicant herein (original plaintiff), whilst the other is by the Respondent (original defendant). The report prepared by Harshad S. Maniar, Government approved registered valuer, fixing a market rental of Rs.5000/- per month for residential premises admeasuring about 52.50 sq.ft. at 23 A, Dongarshi Road, Malbar Hill, Mumbai appears to be very much in order. The market value has been properly worked out; the rate of return applied is less than 3% per annum. The rival report presented by the Respondent herein adopts the rate of Rs.900/- per month, which is grossly inadequate, having regard to the premises and its location. There is nothing to indicate on what basis this rate has been adopted by the valuer. Learned Counsel for the Applicant, however, leaves it to the Court to determine a fair rate having regard to the premises, its location and use. Considering the submissions of the parties, this Court is of the view that Rs.3000/- per month would be appropriate compensation for interim use of the suit premises by the Respondent herein.

4. The parties also contest the date, from which the compensation determined by this Court is payable. The Applicant prays for payment of compensation with effect from 12 September 2008, which is the date of the decree. At the time of the decree or even at the appellate stage, no such compensation was sought by the Applicant. The present civil application for determination of compensation was made on 3 June 2015. The compensation ordered by this Court shall be payable, accordingly, with effect from 3 June 2015.

5. Learned Counsel for the Applicant relies on the case of **State of Maharashtra vs. Super Max International Pvt. Ltd.**<sup>1</sup> In this judgment, the Supreme Court, relying on its decision in **Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.**<sup>2</sup>, held that a tenant suffering a decree of eviction may continue his fight before a superior forum, but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum and it is with effect from that date that the tenant is liable to pay mesne profit. The question to be considered just now is not what should finally be taken as the due date from which mesne profits are payable by the tenant against whom a decree of eviction has been passed. The question is of interim rent pending determination of the CRA. At the hearing of the CRA, both questions, namely, (i) whether and in what quantum rent should be ordered to be paid and, (ii) from what date it should be paid, can be determined. Today, the Court is merely determining interim compensation pending hearing and final disposal of the CRA.

6. The Respondent shall, accordingly, pay interim compensation at the rate of Rs.3000/- per month from 3 June 2015 till date and also hereafter. The arrears of compensation shall be deposited by the Respondent in Court within three months from today. In case the amount is not deposited within the period stipulated as above, the interim protection, if any, to the Respondent in the present CRA shall stand vacated. Needless to add that the Respondent shall continue to

---

1 (2009) 9 SCC 772

2 (2005) 1 SCC 705

pay interim mesne profits ordered as above prospectively from today regularly. The Civil Application is disposed of accordingly.

( S.C. GUPTE, J. )

Smita  
Gonsalves

Digitally signed by  
Smita Gonsalves  
Date: 2019.10.03  
15:09:02 +0530