

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 16189 OF 2019

Abdul Salam Khuda Bax (deleted
since deceased)

1(a) Parvez Iqbal s/o. Abdul Salam Khuda
and ors.

.. Petitioners

vs.

Mujibur Rehman Haji Israr
Alam Siddiqui

.. Respondent

WITH

WRIT PETITION (ST) NO. 16914 OF 2019

Mujibur Rehman Haji Israr
Alam Siddiqui

.. Petitioner

vs.

Abdul Salam Khuda Bax (deleted
since deceased)

1(a) Parvez Iqbal s/o. Abdul Salam Khuda
and ors.

.. Respondents.

Mr. P.J. Thorat for the Petitioners in WPST 16189/19 and for
the Respondents in WPST 16914/19.

Mr. B.P. Pandey i/b Mr. Vivek B. Pandey for the Respondent
in WPST 16189/19 and for the Petitioner in WPST 16914/19.

CORAM : R. G. KETKAR, J.

DATE : 25th JULY 2019.

P.C. :-

1] Heard Mr. P.J. Thorat, learned counsel for the
petitioners in Writ Petition (St) No. 16189 of 2019 and for
the respondents in Writ Petition (St) No. 16914 of 2019 and
Mr.B.P. Pandey, learned counsel for the respondent in Writ
Petition (St) No. 16189 of 2019 and for the petitioner in Writ
Petition (St) No. 16914 of 2019 at length.

2] These petitions take exception to the order dated 15th April 2019 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exhibit-7 in (A1) Appeal No.248/2017. By that order, the Appellate Court allowed the application made by the petitioners in Writ Petition (St) No.16189 of 2019, hereinafter referred to as the '*defendants*' under Order XLI Rule 5 of the Code of Civil Procedure, 1908 (for short, '*CPC*') and stayed the eviction decree dated 5th May 2017 passed by the learned Trial Judge in R.A.E. Suit No.75/122 of 2012 till disposal of the appeal subject to the defendants paying compensation at the rate of Rs.1,15,500/- per month from the date of the decree i.e. 5th May 2017 till May, 2019 within two months from the date of the order, among other directions.

3] Rule in both the petitions. Mr. Pandey waives service on behalf of the respondent in Writ Petition (St) No. 16189 of 2019 and Mr. Thorat waives service on behalf of the respondents in Writ Petition (St) No. 16914 of 2019. Having regard to the narrow controversy raised in these petitions, at the request of and with the consent of the parties, Rule in

both the petition is made returnable forthwith and the petitions are taken up for final disposal.

4] The petitioners in Writ Petition (St) No. 16189 of 2019 are the defendants and the respondent in Writ Petition (St) No.16189 of 2019 is the plaintiff. The plaintiff instituted suit for eviction and possession of Bakery No.8 on the ground floor of Mujiber Rehman and Brother Building situate on the plot of land i.e., 28/32, C.S.No.240, 1/240, Shuklaji Street (Foaras Road), Mumbai- 400 008 (for short "*suit premises*"). In paragraph 2 of the plaint, the plaintiff asserted the area of the suit premises is about 1390 sq.feet. The defendants filed the written statement. In paragraph 4 of the written statement, the defendants denied that the suit premises ad-measures about 1639 sq.ft as alleged. The correct area of the suit premises, i.e., shop No. 8 is 2583 sq.ft. as shown in the Municipal licence.

5] It is common ground between the parties that the Lease Deed was executed on 19th January 1957 and open land ad-measures approximately 60' x 25', i.e., 1500 sq. feet marked

in red colour in the plan annexed to the Lease Deed was let out to the defendants. It is also common ground between the parties that the learned Trial Judge while decreeing the suit has not recorded any findings as regards actual area in possession of the defendants.

6] The plaintiff relied upon the Valuation Report dated 15th July 2017 submitted by Kishore Karamsey & Co.. The market rates for industrial area as per Ready Reckoner for the year 2012 to 2017 was taken into consideration. The relevant portion of that Report reads thus:

**MARKET RATES FOR INDUSTRIAL AREA AS PER
READY RECKONER FOR THE YEAR 2012 TO 2017**

Year	Ready Reckoner Rate		Capitalised @8%
	Per Sq.Mtr.	Per Sq.Ft.	
2012	125100	11622	930
2013	131400	12207	977
2014	144600	13434	1075
2015	166300	15450	1236
2016	171300	15914	1273
2017	171300	15914	1273

Annual rate for the year 2012 was taken as Rs.930/- per sq.ft and accordingly monthly rate for the year 2012

came to Rs.77/- per sq.ft. Annual rate for the year 2017 was taken as Rs.1273/- per sq.ft. and monthly rate for the year 2017 came to Rs.106/- per sq. ft. As against this, the defendants relied upon the Valuation Report dated 3rd July 2018 made by Basavaraj Masanagi & Co.. The Valuer recommended that rental value for the area 1390 sq.ft. comes to Rs.35,000/- per month at the rate of Rs.25/- per sq.ft.

7] Mr. Thorat submitted that the Valuation Report relied upon by the plaintiff does not take the comparable instances. The valuation is made on the basis that the defendants are in possession of 2583 sq. ft. He also criticised the method adopted by the Valuer for valuation of the suit property. He further submitted that what was let out to the defendants was an open land. In other words, valuation cannot be made on the basis of construction made on the open plot of land.

8] On the other hand, Mr. B.P.Pandey submitted that admittedly the suit premises is used for Bakery which is a commercial purpose. As against this, the Valuation Report

submitted by the plaintiff's valuer is based upon Ready Reckoner for built-up area of industrial area which is Rs.1,25,100/- per sq.mt. As against this, for commercial area on the ground floor the rate is Rs.2,88,200/- per sq. meter. He further submitted that the learned Trial Judge decreed the suit on 5th May 2017. While fixing the compensation, the Appellate Court has taken into account the valuation of the year 2012 and not 2017.

9] As both the plaintiff and the defendants have challenged the impugned orders, the learned counsel submit that the impugned orders may be set aside and application at Exhibit-7 may be restored to its original position. The same may be decided afresh by giving liberty to the parties to produce additional material for fixing the reasonable compensation.

10] On instructions, Mr. Thorat submits that without prejudice to the rights and contentions of the defendants, within 8 weeks from today, the defendants will deposit the amount of compensation as per the impugned order. He

submitted that it may be clarified that this shall be subject to the outcome of the order that may be passed after remand.

11] In view thereof, by consent of the parties the impugned order is set aside and the application at Exhibit-7 made by the defendants stand restored to its original position. Without prejudice to the rights and contentions of the defendants, they will deposit the arrears as ordered by the Appellate Court as per Clauses (1) and (2) within 8 weeks from today, which shall be subject to the further orders that may be passed in application at Exhibit-7. Till such time the application at Exhibit-7 is decided, the defendants, without prejudice to their rights and contentions, will go on depositing Rs.1,15,500/- as per clause (2) of the operative part of the order. Again this shall be subject to the adjustment, if any, depending upon outcome of the application. The Appellate Court is requested to dispose of the application at Exhibit-7 within 12 weeks from today.

12] The parties are at liberty to produce additional materials in support of their case for fixing the reasonable

compensation. All contentions of all parties are expressly kept open. Rule in both the petitions is made absolute with no order as to costs.

(R. G. KETKAR, J.)