

THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6030 OF 2019

Babulal Hazarimal Jain	...	Petitioner
Vs.		
State of Maharashtra and others	...	Respondents

Mr. Sushil Upadhyay i/b. Mr. A. M. Saraogi for Petitioner.
Mr. A. R. Metkari, AGP for Respondent No.1.
Mr. Susmit S. Phatale for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : JULY 17, 2019

P.C. :

Heard Mr Upadhyay, learned Counsel for the petitioner, Mr.Metkari, learned AGP for the respondent No.1 and Mr. Phatale, learned Counsel for the respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.2' has challenged the order dated 23.01.2018 passed by the Appellate Bench of the Small Causes Court below exhibit-6 in Appeal No.4 of 2017. By that order, the Appellate Court allowed the application filed by the defendant No.2 seeking stay to the operation and execution of the judgment and decree dated 13.10.2016 passed by the learned trial Judge in R.A.E.&R. Suit No.879/1508 of 2001 subject to the conditions that-

- a. original defendants No.2 and 4 shall pay and continue to deposit the sum of Rs.1,50,000/- per month from the date of decree i.e. from 13.10.2016 as compensation for the use and occupation of the suit premises during the pendency of the present Appeal;
- b. defendants No.2 and 4 shall deposit the arrears of

compensation either in lump sum or in 3 equal monthly installments from 23.01.2008 payable on or before 5th day of each calendar month;

c. On such deposit being made the office of Court of Small Causes, Mumbai shall invest the amount in Fixed Deposit of one year extendable thereafter on yearly basis till further order;

d. defendants No.2 and 4 shall not part with possession in respect of the suit premises during the pendency of the appeal.

3. In support of this Petition, Mr. Upadhyay submitted that the compensation fixed by the Appellate Court is highly excessive, exorbitant and punitive. He submitted that defendants are carrying on their religious activities in the suit premises. They are not giving the suit premises for holding any functions. The Appellate Court was, therefore, not justified in directing the defendants to deposit Rs.1,50,000/- per month from the date of the decree. He has taken me through the impugned order and submitted that the findings recorded by the Appellate Court in paragraph 18 are not borne out from the record.

4. On the other hand, Mr. Phatale supported the impugned order. He has taken me through the photographs produced on record to indicate that the defendants have converted the suit premises into a big hall thereby changing the user of the suit premises from residential to commercial. The suit premises is used for arranging functions, etc.

5. 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 the area of the suit premises is 922.56 sq.ft. The suit premises is situate in Jacob Circle, which is the central location. In paragraph 18, the Appellate Court noted that the internal

walls in the suit premises were removed and the suit premises has been converted into a big hall. After considering the photographs on record, the Appellate Court observed that there is change of user from residential to commercial. The article like headrests (*takias*), chairs and big utensils are indicative of the fact that the premises is being used for arranging functions. The Appellate Court has considered the valuation reports submitted by the defendants as also the plaintiffs. The Appellate Court also noted that in the rejoinder, defendants did not deny as regards photographs produced by the respondent. Whereas the valuation report produced by the respondent shows that reasonable compensation would be Rs.2,92,845/- per month, the Appellate Court has brought it to 50% of that amount by directing the defendants No.2 and 4 to deposit Rs.1,50,000/- per month. In the case of ***Atmaram Properties (P) Ltd Vs. Federal Motors (P) Ltd., (2005) 1 SCC 705***, in paragraph 9, the Apex Court observed thus,

“Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record - all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.*, AIR 1986 SC 180, - "commonsense, which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants"

6. Applying the tests laid down by the Apex Court to the facts of the present case, I do not find that the Appellate Court committed any error in passing the impugned order. Defendant No.2 was not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendants No.2 was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other

than arrived by the Courts below. In view thereof, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed. Time to deposit arrears of compensation as per the impugned order stands extended by a period of four weeks from today. Order accordingly.

(R. G. KETKAR, J.)

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