

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.502 OF 2018
IN
FIRST APPEAL NO.19 OF 2017

Guest Keen Williams Limited ...Applicant
vs.
Rajkumar Rameshwar Surju and Ors. ...Respondents

Mr. Prasad Dani, Sr. Counsel a/w. Ms. Uma Sharma and Mr. S.
Choudhari I/b. Dharam & Co., for the Applicant
Mr. R.D. Mishra, for the Respondent.

CORAM : M. S. SONAK, J.

DATE : JUNE 26, 2019
(IN CHAMBER)

P.C.:

. Heard Mr. Prasad Dani, learned Sr. Counsel for the Applicant
(original Respondent) and Mr. R.D. Mishra, learned counsel for the
Respondent (original Appellant).

2. Taking into consideration the order dated 5th April, 2019 this
Civil Application has been placed for my consideration.

3. The Civil Application seeks enhancement of monthly
compensation amount of Rs. 15,000/- p.m. to Rs. 67,840/- p.m.
as well as enhancement of electricity/water consumption charges
from Rs. 5,000/-p.m. to Rs. 15,400/- p.m.

4. Mr. P.S. Dani, learned senior counsel for the Applicant points out that the suit premises comprises *inter alia* six washing tanks and five rooms. He submits that the suit premises are being used by the Respondents for commercial purposes i.e. to wash/iron clothes on commercial basis. He submits that the Applicant had installed (sub-meter) and the reading indicate that the Applicant are consuming electricity/ water charges to the extent of Rs. 15,400/- p.m. He refers to valuation report furnished by S.G. Bapaye & Associates and on the basis of the same he submits that the monthly compensation amount is required to be enhanced to Rs. 67,840/-. He submits that the earlier order dated 28th February, 2017 was made at the stage when all these materials were not produced on record and therefore the same required modification. He submits that the valuation report produced on record by the Applicant has not even been contested by the Respondent by filing any counter valuation report. For all these reasons, he submits that the Civil Application may be made absolute.

5. Mr. R.D. Mishra, learned counsel for the Respondent disputes the Civil Application. He points out that the premises are

not at all being used for the commercial purpose. In particular, he submits that six tanks are lying unused and through the suit premises no commercial operation like washing and iron of clothes is being undertaken. He submits that the Respondent hardly use two tube lights and a fan and such routine electrical appliances. He submits that the valuation report is totally defective as it proceeds on incorrect parameters. He points that that the Respondent cannot even offered to engage other valuers, since they are the workers. He submits that there is no case made out for enhancement. He urges that Civil Application may be dismissed.

6. In so far as the issue of sub meter is concerned, the same is contested by the Respondent. There is really no satisfactory material on record on the basis of which it can be said that the Respondents are consuming electricity valued Rs. 15,400/- p.m. Besides, Mr. Mishra on behalf of the Respondents has made categorical statement that the suit premises are not being used for any commercial purposes. He has, no doubt, on the basis of instructions stated that water tanks are not being used and through the suit premises no laundry operation like washing or ironing of clothes is undertaken by the Respondents on commercial

basis. These statements are accepted as statements made to this Court. In view of this, there is no case made out for enhancement of the amount in relation to the electricity supply and for that matter water charges.

7. Coming to the increase sought for in the monthly compensation of Rs. 67,840/-, again I am satisfied that on the basis of material on record, no such enhancement is presently warranted. The valuation report really does not take cognizance of the nature of the structure and its present condition. There is a photograph placed on record on page No. 20. From the same, the claim for monthly compensation of Rs. 67,840/- does not appear to be reasonable. It is possible that the Applicant seek to secure eviction of the Respondents by insisting upon such large payment so that the Respondents are deprived of an opportunity of even contesting their Appeal on merits or at least to continue for possession during the pendency of the Appeal. The valuation report proceeds on the basis of premises were being used for commercial purpose. Mr. R.D. Mishra has pointed out that is not the case. The compensation of Rs. 15,000/- p.m. for use of the premises and Rs. 5,000/- p.m. towards electricity and water charges, at least

presently appears to be reasonable and there is really no case made out for modification.

8. Accordingly, the Civil Application is dismissed.

9. There shall be no order as to costs.

(M. S. SONAK, J.)