

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.674 OF 2019

Avinash J. Narvekar		
since deceased through heirs		
Ashwani wd/o. Avinash Narvekar		
And Others	...	Petitioners
Versus		
Shri Hiranyakant Govind Samant	...	Respondent

Mr. Rajesh B. Parab for the Petitioners.
Mr. Kalpesh Joshi for the Respondent.

CORAM : S.C. GUPTE, J.

DATE : 13 AUGUST 2019

P. C. :

. This writ petition challenges an order of interim mesne profits passed by the Appellate Bench of Court of Small Causes at Mumbai, Bandra Branch. The Respondent herein is the original Plaintiff. By a decree passed in his favour by the Court of Small Causes at Mumbai, Bandra Branch in R.A.E. Suit No.138 of 2007, the Respondent's suit was decreed and the Petitioners (original defendants) were directed to hand over possession of the suit premises to the Respondent. That order was challenged by the Petitioners before the Appellate Bench of the Court of Small Causes at Mumbai. The Appellate Bench had to fix interim compensation payable for use of the suit premises during the pendency of the appeal. By the impugned order, the Appellate

Bench fixed a sum of Rs.15,000/- per month as an interim compensation during the pendency of the appeal. The suit premises consists of a flat situated on CTS No.728/4 on the Ground Floor, “Sheela Sadan” situated at Ceasor Road, Amboli, Andheri (West), Mumbai-400 058. The parties had submitted their valuation reports for fixation of compensation for the suit premises. The Petitioners’ report proposed reasonable compensation of Rs.5,000/- per month as against Rs.48,000/- per month proposed by the Respondent. In the impugned order, the Appellate Court rejected compensations indicated in both reports. The Court was of the view that the carpet area as well as amenities considered in both reports were different and neither of the valuations could be relied upon. The Court estimated an in-between figure of compensation at the rate of Rs.15,000/- per month as reasonable.

2 Considering the suit premises, its location and amenities, it cannot be said that the compensation fixed by the Appellate Bench is either disproportionately high or is unreasonable or perverse. It is only an interim compensation, which is anyway subject to final determination by the Court. No infirmity can be found, accordingly, with the impugned order dated 8 October 2018 within the parameters of judicial review under Articles 226 or 227 of the Constitution. The writ petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)