

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.517 OF 2018

K. Chandrasekhar Nayak

...Petitioner

Versus

Hansa Villa Realty Pvt. Ltd.and anr.

...Respondents

Mrs.Vasanti S. Dighe for the petitioner.

Mr.Jaydeep Deo for respondent no.1.

CORAM: DAMA SESHADRI NAIDU, J.

DATE : 21st JUNE 2019.

P.C. :

1. The petitioner-tenant suffered a decree of eviction in RAE Suit No.582/1042 of 2008, before the Small Causes Court at Mumbai. Assailing that decree, dated 7th April 2017, the petitioner filed an Appeal No.192 of 2017 before the Small Cause Court's Appellant Bench.

2. On the tenant's application to have the decree stayed, on 21st November 2017 the Appellate Bench, in Exhibit 7, passed a conditional order. The petitioner had to pay Rs.23,000/- as monthly

compensation to the landlord, pending the appeal. Assailing the conditional stay, the petitioner has come this Court.

3. Mrs. Dhige, the learned counsel for the tenant, strenuously contends that the building is many years old and is in a dilapidated condition. It has no running water and has a common toilet. According to Mrs. Dhige, the tenant's father got himself inducted as the first tenant when the building was constructed and continued during his lifetime as a tenant. Later, on his death, the petitioner, the present tenant, succeeded.

4. Mrs. Dhige has taken me through the impugned order and pointed out that the rent the tenant has all along been paying was only Rs.150/-, and the property is only about 270 sq.ft. The Appellate Bench's direction that the petitioner should pay Rs.23,000/- per month, Mrs. Dhige submits, is exorbitant and a back-breaking burden on the tenant. Thus, she urges this Court to interfere with the impugned order.

5. On the other hand, Shri Deo, the learned counsel for the respondent-landlord, denies that the building is dilapidated, though it is old. To underline this fact, he showed the photographs. Besides that, he also, incidentally though, touches upon the other pending litigation.

That litigation, it seems, involves other tenants. And the Appellate Bench is said to have passed similar or the same orders in the appeal as it did in this case. The compensation, Shri Deo asserts, is not exorbitant, but is less than the prevailing market rate in the vicinity. Thus, he urges this Court not to interfere with, what he calls, the Appellant Bench's reasoned order—and an interim one, at that.

6. The petitioner is the unsuccessful tenant who suffered a decree of eviction. Invoking the appeal provision, he filed Appeal No.192 of 2017 before Appellate Bench of the Small Cause Court. Then, to have the decree stayed, the tenant invoked Order 41 Rule 5 of the Civil Procedure Code. Guided by the Supreme Court's judgment in ***Atma Ram Properties (P) Ltd Vs. Federal Motors (P) Ltd.***¹, the Appellate Bench has directed to petitioner to pay compensation of Rs.23,000/- per month.

7. It is well settled rule of adjudication that this Court exercises its revisional or supervisory jurisdiction in matters involving jurisdictional errors. It does not, however, exercise that power to upset pure findings of fact. Nor does it intend to interfere with the decisions

1 (2005) 1 SCC 705

the courts below render exercising their judicial—and statutorily conferred—discretion.

8. The above proposition of law accepted, this Court is not sitting in appeal over the order the tenant now impugned. It can only examine whether the Appellate Bench has properly exercised its discretion under Order 41, Rule 7 of CPC. Nothing beyond. Unless the Appellate Bench's discretionary order suffers from any manifest or demonstrable perversity, the decision impugned remains out of this Court's adjudicatory bounds. Here, examined from the perspective of jurisdictional error or perverse exercise of judicial discretion, I find the order suffering from neither.

9. I therefore see no ground to interfere with the Appellate Bench's legitimate exercise of its discretion in rendering the impugned order under Order 41 Rule 5 of CPC.

As a result, I dismiss the writ petition, as devoid of merit.

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[DAMA SESHADRI NAIDU, J.]