

1 of 7

continue to deposit the monthly interim compensation on or before 10th day of each succeeding month commencing from December, 2018 till final disposal of appeal.

- (c) On such deposit being made the office of Court of Small Causes, Mumbai shall invest the amount in Fixed Deposit of 01 (one) year in any Nationalized Bank, extendable thereafter on yearly basis till further order.

3. Rule. Mr. Deo waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Haridas strenuously contended that interim compensation fixed by the Appellate Court is highly excessive, oppressive and un-reasonable. He invited my attention to the affidavit of rejoinder dated 12th October, 2018 filed by the petitioner. In paragraph 11, the petitioner asserted that the suit premises is situate in by-lane and not on main road. The suit premises is used by him for cutting and polishing marble. There is no sufficient business in the suit premises. From the income augmented from the business, he is only able to maintain his family members which are 4 in numbers. His wife is blind. He has one son and one daughter who are studying in the College, His brother-in-law (wife's brother) is mentally challenged person and he is also residing with the petitioner as there is no one to look after him. Thus, in all, 5 persons are dependent on income of the business carried on from the suit premises.

5. Mr. Haridas submitted that the Appellate Court has not properly applied principles laid down by the Apex Court in **Atma Ram Properties (P)**

Ltd Vs. Federal Motors (P) Ltd, (2005) 1 SCC 705 and State of Maharashtra Vs. Super Max International Private Limited, (2009) 9 Supreme Court Cases 772. He also relied on the decision of this Court in **Marjorie Passanah Vs. Mumtaz Iqbal Shaikh, 2009 (1) Mh.L.J, 972** to contend that the Appellate Court has to fix reasonable compensation while granting stay to the eviction decree.

6. Mr. Haridas submitted that the Appellate Court fixed interim compensation without considering the material on record. The Appellate Court relied on the ready reckoner of the commercial premises which range from Rs.1,00,000 to Rs.1,50,000/- per square meter. In the light of the ready reckoner, the Appellate Court held that market value of the suit premises comes to Rs.53,00,000/- approximately. Considering interest @ 6% per annum on the said amount, the Appellate Court fixed compensation @ Rs.31,800/- per month. He submitted that even if it is accepted that market value of the suit premises is Rs.53,00,000/- and interest of 6% per annum on the said amount is considered, the amount comes to Rs.3,18,000/- per annum. Consequently, monthly compensation comes to Rs.26,500/-. He, therefore, submitted that the Appellate Court committed error in fixing monthly compensation @ Rs.31,800/- per month.

7. Mr. Haridas submitted that the Appellate Court had fixed excessive, fanciful or punitive compensation. It will not be possible for the petitioner to comply the order and if the petitioner is unable to comply that order, the plaintiffs will be in a position to execute the decree which will frustrate the appeal filed by the petitioner. He, therefore, submitted that interim compensation fixed by the Appellate Court deserves to be reduced to Rs.25,000/-.

8. On the other hand, Mr. Deo supported the impugned order. He submitted that the petitioner is carrying on business of selling tiles in addition to cutting and polishing of marble from the suit premises. He has placed on record photographs showing the suit premises, which are taken on record and marked 'X' for identification. He submitted that the suit premises is on Bellasis Road which is main road and in the heart of the city.

9. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the plaintiffs had instituted the suit for recovery of possession of Shop No.5 admeasuring 570 square feet situate on the ground floor, opposite Raj Oil Mill, 225/245, Bellasis Road, Nagpada, Mumbai – 400 008 (for short 'suit premises'). The Appellate Court has recorded a categorical finding that the suit premises is situate in the heart of the city of Mumbai. The places such as Girgaon Chowpaty and Bombay Central Railway Station are in the nearby vicinity. The Appellate Court considered ready reckoner of the commercial premises range from 1,00,000/- to 1.5,00,000/- per square meter. The Appellate Court has considered minimum rate of ready reckoner for arriving at value of the suit premises and held that value of the suit premises comes to Rs.53,00,000/- approximately. On that basis, the interest of 6% per annum would come to Rs.31,800/- per month. After considering age of the building and it's locality, the Appellate Court fixed compensation @ Rs.31,800/- per month. Mr. Deo did not dispute that monthly compensation comes to Rs.26,500/-.

10. In the case of **State of Maharashtra** (supra), the Apex Court recorded submission in paragraph 9 about decisions in **Atma Ram Properties (P) Ltd** (supra) and **Niyas Ahmad Khan Vs. Mahmood Rahmat Ullah Khan (2008) 7 Supreme Court Cases 539** had taken conflicting views on the

correctness of such orders passed by the High Court. After considering the several judgments, in paragraph 13, the Apex Court held that decision in **Atma Ram Properties (P) Ltd** (supra) and **Niyas Ahmad Khan** (supra) are not conflicting. In paragraphs 77 and 78, it was observed thus;

“77. In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act it is open to the appellate or the Revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/decreed is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

78. In the case in hand, the High Court has fixed the amount of Rs.5,40,000/- per month with reference to Stamp Duty Ready Reckoner and hence, its reasonableness cannot be doubted”. In fairness to Mr. Lalit he did not challenge the fixation of the amount on that ground”.

11. A perusal of the above extracted paragraphs shows that the Apex Court held that while staying eviction decree, it is open to the Appellate or Revisional Court to issue direction to pay monthly compensation at the rate higher than the contractual rent. While fixing compensation, the Court has to exercise restraint and should not fix any excessive, fanciful and punitive amount. In that case, the High Court has fixed amount of Rs.5,40,000/- per month with reference to ready reckoner. It is observed that its reasonableness cannot be doubted.

12. In the present case, the Appellate Court has fixed interim compensation on the basis of the ready reckoner. Mr. Haridas has, however, not disputed the finding recorded by the Appellate Court in paragraph 9 to the

effect that as per ready reckoner rate of the commercial premises range from Rs.1,00,000/- to 1.5,00,000/- per square meter.

13. Mr. Haridas submitted that having regard to the number of family members dependent on the petitioner as also income augmented from the suit premises, it is not possible for the petitioner to pay interim compensation @ Rs.31,800/- per month. In the light of the ready reckoner, market value of the suit premises comes to Rs.53,00,000/- approximately and considering an interest of 6% per annum on the said amount, the yearly compensation comes to Rs.3,18,000/- and the monthly compensation comes to Rs. 26,500/- per month. Therefore, it would be just and expedient to direct the petitioner to deposit compensation @ Rs.26,500/- per month. As mentioned earlier, the suit premises admeasures 570 square feet which is on the main road. The petitioner is carrying on business of cutting and polishing marbles. From the photographs, it is evident that he is also carrying on business of selling marbles from the suit premises.

14. At this stage, Mr. Haridas submits that the Appellate Court has directed the petitioner to deposit interim compensation @ Rs.31,800/- per month from the date of the decree i.e from 10th January, 2018 till 30th November, 2018 within a period of one month. He submits that the petitioner is present in the Court. He has tendered photo copy of his Driving Licence, which is taken on record and marked 'Y' for identification. Upon taking instructions from him, he states that the petitioner will clear arrears of interim compensation @ Rs. 26,500/- per month within 4 months by depositing 25% amount in each month together with interim monthly compensation.

15. In view thereof, clauses (a) and (b) of the operative part of the impugned order need to be modified in following terms;

- “(a) The appellant/original defendant shall deposit the interim mesne profits/compensation @ Rs.26,500/- per month from the date of the decree till final disposal of the appeal.
- (b) The appellant shall deposit arrears of compensation @ Rs.26,500/- per month from the date of decree i.e from 10th January, 2018 till 31st December, 2018 within a period of 4 months from today by depositing 25% amount in each month together with interim monthly compensation from 1st January,. 2019 onwards.

Rest of the operative part of the order passed by the Appellate Court is maintained. It is made clear that in case, the petitioner does not deposit 25% arrears within one month from today, interim order shall stand vacated without further reference to the Court. If amount is deposited, the Appellate Court will deposit the same as per the operative part of the order. Rule is partly made absolute in the aforesaid terms with no order as to costs.

16. **List the Petition for reporting compliance on 20th February, 2019.**

[R.G. KETKAR, J.]