

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.1537/2019 IN WRIT PETITION NO.1587/2014

Anilkumar Gopaldas Agrawal Vs. Sadruddin s/o Jivanbhai Jafari and others

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.V.Purohit, Advocate for petitioner in W.P.No.1587/2014 and
Shri V.U.Waghmare, Advocate for petitioner in W.P.No.7132/2016
Shri Atul Vastani, Advocate with Shri V.R.Borkar, Advocate for respondent
no.1/applicant(in both petitions).

CORAM : A.S.CHANDURKAR, J.

DATED : August 21, 2019

The respondent no.1 is permitted to place on record the valuation report as prayed. Civil Application is disposed of.

C.A.(W) No..611/2019 in W.P.No.1587/2014 and

C.A.(W) No2223/2019 in W.P.No.7132/2016.

The respondent no.1 by this application prays that the petitioner who is tenant of the premises owned by the respondent no.1 be directed to pay an amount of Rs.40,000/- per month towards rent from the date the trial Court has directed the petitioner to deliver possession of the suit premises to the respondent no.1.

In the application it is stated that a decree for possession as passed by the trial Court and confirmed by the appellate Court has been stayed by this Court while admitting the present writ petition. The tenanted premises is a shop admeasuring about 350 square feet on the ground floor of the building owned by the respondent no.1. As per the valuation report placed on record, the entire structure admeasuring about 1400 square feet is shown to be valued at Rs.91,65,406/-. In the light of the

fact that the agreed rent initially was Rs.1,200/- per month and which was subsequently enhanced to Rs.1,800/- per month is on a lower side and as the respondent no.1 has been deprived of the decree for possession as passed by the trial Court and confirmed by the appellate Court, the petitioner should be directed to pay higher amount of occupation charges than the agreed amount of rent. In that regard, reliance is placed on the decision in *State of Maharashtra and anr. Vs. M/s. Super Max International Pvt. Ltd., AIR 2010 SC 722*. It is thus submitted that the application be allowed in aforesaid terms.

On behalf of the petitioner Shri S.V.Purohit learned counsel submits that he is in occupation as tenant since the year 1985. The premises in question are aged more than forty years. The same requires repairs and upkeep which is being done by the tenants. The rent is being paid in advance and presently the same has been paid till March 2020 @ Rs.2,200/- per month. Though commercial activities are being undertaken by the petitioner, the premises are not situated on the main road and hence there is no reason to direct payment of higher occupation charges. The valuation report as relied upon is disputed. It is thus submitted that the respondent no.1 can seek fixation of fair rent instead of calling upon the petitioner to pay higher occupation charges.

Shri V.U.Waghmare, learned counsel adopted these submissions while opposing the similar prayer made in Civil Application No.2223/2019 in W.P.No.7132/2016.

I have heard the learned counsel for the parties and I have perused the material on record. It is not in dispute that a decree for possession has been passed against both the petitioners which has been confirmed by the appellate Court. The premises occupied by each petitioner admeasures 350 square feet and the petitioners are undertaking commercial activities therein. It is also not in dispute that the petitioners are in occupation of the premises since the year 1985 which would indicate

that the building was constructed prior to 1985. As per valuation report relied upon by the respondent no.1, the total area admeasures about 136.41 square meters and the valuation indicated is about Rs. Ninety one Lakhs and odd. Considering the fact that the petitioners have suffered decree for eviction and are running business in shop premises coupled with the fact that the building in question has been constructed prior to 1985, by applying some guess work I am inclined to direct payment of occupation charges @ Rs.20/- per square feet. This would come to Rs.7,000/- per month for 350 square feet area as occupation charges payable to the respondent no.1.

The enhanced occupation charge shall be payable from 01.01.2019 without prejudice to the rights of the parties. The difference in the amount of occupation charges that is payable as per this order be paid within a period of three months from today.

It is clarified that the adjudication of this amount is only for the purposes of the present applications and without prejudice to the rights of the respective parties.

Civil Application Nos.611/2019 and 2223/2019 are disposed of.

JUDGE

Andurkar.