

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

WRIT PETITION NO. 11859 OF 2019

Mrs. Neelam Deepak Adiani			
Also known Hema Deepak Adiani	...	Petitioner	
V/s.			
Mrs. Radha Gopal Prabhu			
(Since deceased) Through LRs. & Ors.	...	Respondents	

Mr. R.M. Haridas for Petitioner.
Mrs. Ranjana Parikh for Respondents.

CORAM : A.S. GADKARI, J.

DATE : 4th February 2020.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner/original defendant/tenant has impugned Order dated 4th October 2019 passed below Exhibit-7 in Appeal No. 81 of 2019 by the Appellate Bench of the Small Causes Court, Mumbai thereby fixing interim mesne profit/compensation @ Rs.50,000/- per month from the date of decree till final disposal of the appeal with respect to the suit premises.

2] Heard Mr. Haridas, learned counsel for the petitioner and Mrs. Parikh, learned counsel for the respondents. Perused the record annexed to the Petition.

3] The petitioner is facing a decree of eviction passed by the Court of Small Causes dated 13th December 2008 in RAE Suit No. 172/364 of 1998 filed by the respondents. In an appeal preferred by the petitioner, the Appellate

Court while granting stay to the operation and execution of the decree passed by the Trial Court has directed the petitioner to pay an amount of Rs.50,000/- as interim compensation per month to the respondents by its impugned Order dated 4th October 2019.

4] Mr.Haridas, learned counsel for the petitioner pleaded that, the petitioner is a senior citizen and is unable to pay the said amount towards interim compensation. He submitted that, the suit premises is situated in a old building which has no facility of lift. He submitted that, the amount fixed by the Appellate Court is exorbitant.

5] It is an admitted fact on record that, the suit premises ad-measures 800 sq.ft. and is situated at Shivaji Park, Dadar, Mumbai, an upscale residential area in the City of Mumbai.

6] Though, both the parties herein have not produced on record the Government Valuer's Report to ascertain the fact that, as to how much amount the suit premises will fetch as rent per month in open market, on the basis of the 'Leave and Licence Agreement' produced by the respondents before the Appellate Court, the Appellate Court has fixed the said amount of interim compensation @ Rs.50,000/- per month. Taking into consideration the fact that, the suit premises admeasures 800 sq.ft. of carpet area and is located in plush locality of Mumbai, according to me the amount so fixed by the Appellate Court is really reasonable. However, at the profused request made by Mr.Haridas, learned counsel for the petitioner, the said compensation amount is

reduced to Rs.47,500/-.

Learned counsel appearing for the respondents has no serious opposition for reduction of the amount of Rs.2,500/- from the total compensation awarded by the Appellate Court.

7] In view of the above, the clause (2) of the Operative Part of the impugned Order is hereby partly modified and the petitioner is directed to pay compensation @ Rs.47,500/- per month from the date of passing of the decree i.e. from 13th December 2018 till final disposal of the said appeal.

As far as, the arrears from 13th December 2018 till December 2019 is concerned, the petitioner is directed to deposit the said amount in the Registry of the Small Causes Court within a period of three months from today.

The petitioner is directed to pay/deposit the said interim compensation of Rs.47,500/- per month regularly during the pendency of Appeal, on or before 10th day of every calendar month in the Registry of the Small Causes Court, Mumbai.

As far as compensation for the month of January 2020 is concerned, the petitioner is directed to deposit the said amount in the Registry of the Small Causes Court, Mumbai on or before 10th March 2020.

8] Petition is partly allowed in the aforesaid terms.

[A.S. GADKARI, J.]