

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION NO.230/2018
IN
SECOND APPEAL NO.106/2018

PRABHAKAR DATTATRAYA
BHIDE

... Applicant

Versus

SITABAI RAMA KAMAT GHANEKAR,
REP. BY HIS DULY CONST. ATTORNEY
SHOBHA JAYANT KAMAT TARKAR

... Respondent

Mr. Valmiki Menezes with Mr. G. Agni, Advocates for the Applicant.
Mr. S. D. Lotlikar, Senior Advocate with Mr. N. Amonkar, Advocate
for the Respondent.

Coram:- M.S. SONAK, J.

Date:- 20th July 2021

P. C.:

Heard Mr. Valmiki Menezes with Mr. G. Agni for the Applicant and Mr. S. D. Lotlikar learned Senior Advocate who appears along with Mr. N. Amonkar for the Respondent.

2. This is an application seeking a stay on the decree for eviction of the applicant. Since the appeal is admitted and ad interim relief is continuing since 2018, it is only appropriate that the ad interim relief is confirmed. However, such confirmation will have to be subject to certain conditions particularly as regards the deposit of compensation amount.

3. Now to assist this Court in determining the compensation, the applicant, had initially placed a report under Reference No.9619 of the registered Engineer and Valuer Mr. Mahendra Cacule. In terms of this report, the compensation determined as ₹50,000/- per month from 14.06.2017 onwards. This report is dated 31.05.2019.

4. Later on, Mr. Mahendra Cacule, made an Addendum to this report dated 13.09.2019 in which, he determined the compensation amount of ₹37,500/-. In support of this reduced amount, Mr. Cacule referred to the state of the building. The Addendum refers to the leakage and peeling of the paint.

5. The respondent has relied on a report made by Mr. Suvrat Bhobe, Architect and Government Registered Valuer who has determined the compensation amount at ₹1,05,000/- per month. Mr. Bhobe has relied on a sale deed of a flat at Sujay Apartments opposite Sushila Building. The respondent has also relied upon the Lease Deed dated 25.09.2013 which concerns the HDFC Bank and the Lease Deed dated 11.07.2017, which concerns SpringBoard Business Hub Pvt. Ltd. These lease deeds are in respect of the Shanta Building which is opposite the Daulat Building at which the suit premises are located.

6. Now there is no dispute that the suit premises are located on the third floor of the Daulat building in Panaji and admeasure 433 sq.

meters. The premises are used for commercial purposes. Even in terms of the contract between the parties as of now, the compensation amount would come to approximately ₹35,000/- per month. The applicant's valuer has determined the compensation at ₹37,500/- per month. This was a determination made sometime in the year 2019. The contract between the parties contemplated a 5% increase each year.

7. Therefore, if all these circumstances are taken into account, including the circumstances that the Daulat building in which the suit premises are located is quite old or that the suit premises are affected by some leakages and peeling of paint, in my opinion, an amount of ₹45,000/- per month will be the appropriate compensation.

8. The valuation report submitted on behalf of the respondent or the lease deeds submitted on behalf of the respondent cannot be relied upon at this stage primarily because they relate to incomparable instances. Besides, the premises referred to in the said document do not appear to be in the same position in which the suit premises with which we are concerned are presently to be found.

9. At the stage of determination of the compensation, the Court, has to no doubt protect the interest of the landlords so that the landlords if they ultimately succeed are not driven for yet another

inning of litigation. At the same time, the quantum of compensation should not be such as might render the very prosecution of the appeal by the party who is ordered to be evicted, almost impossible or onerous.

10. Therefore, having regard to all these factors cumulatively, the compensation is determined at ₹45,000/- per month.

11. Thus, this application seeking interim relief is disposed of by making the following order:-

(a) The ad-interim order staying eviction of the applicant is made absolute subject to compliance with the following conditions:-

(i) The applicant will not transfer or part with the possession of the suit premises or otherwise create any third party rights therein;

(ii) The applicant will deposit in this Court, each month, an amount of ₹45,000/- on or before the 10th of each month;

(iii) The compensation will have to be deposited with effect from 01.01.2019. This is because the appeal against the eviction decree was dismissed by the First Appellate

Authority on 25.10.2018;

(iv) The arrears will have to be deposited within four months from today. In determining the arrears, the applicant will be entitled to adjust the amounts paid each month;

(v) The adjustments can also be made by the applicant towards TDS, provided, necessary forms are supplied to the respondent within the period prescribed.

12. In case, there is a default in deposit of arrears or there are any two consecutive defaults, then, ad interim order to stand vacated. In terms of the contract between the parties, by now, the applicant would have to pay approximately ₹35,000/- per month. Therefore, from out of the compensation amount deposited, the respondent is granted liberty to withdraw ₹35,000/- per month after adjusting the amounts already received.

13. Though the eviction of the Applicant is stayed, the trial court can proceed to determine the mesne profits. The order for mesne profits will not be put in execution. The determination of compensation in this order should not influence the trial court in determining the mesne profits.

14. This application is disposed of in the aforesaid terms.
15. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

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