IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

I.A. NO. 2226 OF 2020

IN

CIVIL REVISION APPLICATION NO. 501 OF 2018

Noor Mohamed Ibrahim Tambe …..Applicant.

Vs.

Imperial Tube And Hardware Mart & Anr. …..Respondents.

Mr. Rahul Kadam for the Applicant.
Mr. Jaydeep Deo for the Respondents in IA No.2226 of 2020 and for the Applicant in CRA No.501 of 2018.

CORAM : A. S. GADKARI, J.
DATE : 21st DECEMBER, 2021.

P.C.:-

This is an Application for fixing interim compensation for the suit premises in pursuance of principles enunciated by the Hon'ble Supreme Court in the case of *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., reported in (2005) 1 SCC 705.*

The Revision Application preferred by the Respondents/Revision Applicants has been admitted by this Court by an Order dated 15th January, 2020.

2 It is the contention of the Applicant/landlord that, the Respondents are in possession of tenanted premises admeasuring about 2500 square feet. The said premises is situated in the heart of Mumbai city which is a commercial hub. It is stated that, the suit premises is a commercial premises situated at prime place at Kumbharwada Steel Market, on the ground floor, facing front side of the main road. That, it may fetch substantial rent if given to any other person/company/entity.

3 Mr. Kadam, learned Advocate for the Applicant/Original Respondent submitted that, since the date of passing of the decree i.e. 16th October, 2006, the Respondents have not paid a single penny to the Applicant/landlord and are enjoying the suit property practically free of cost. He submitted that, the Respondents have forced the Applicant/ landlord to face various litigations and is unnecessarily killing time by not making any payment towards compensation to him. He submitted that, the principles of law enunciated by the Hon'ble Supreme Court in the case of *Atma Ram Properties (P) Ltd. (Supra)* and followed in the case of *State of Maharashtra & Anr. Vs. Super Max International Pvt. Ltd. & Ors. reported in (2009) 9 SCC 772* are squarely applicable to the present case.

He submitted that, the Valuation Report of the reasonable market value which the suit premises may fetch if rented in the open market is annexed to the present Application. The Valuation Report given by Lakdavala & Associates, dated 22nd June, 2018 states that, the suit property may fetch rent @ Rs.8 lakhs per month towards prevailing fair market rent of the suit property and the same may be fixed as an interim compensation in the present case by allowing the present Application.

4 Per contra, Mr. Deo learned counsel for the Respondents/ Revision Applicants submitted that, to the rejoinder affidavit, the Applicant himself has annexed certain instances wherein he has mentioned that, reasonable rent of other premises in the same locality is Rs.100 per sq. ft. and the same instances may be applied to the present case also. He submitted that, by filing Affidavit in reply, the Respondent has denied the contention of the Applicant/Original Respondent. That, the Valuation Report submitted by Lakdavala & Associates is on higher side and the same may not be accepted.

He further submitted that, as a matter of fact, the Respondents do not have physical possession of the suit premises however, being a tenant of Applicant/Original-Respondent, he continues to have tenancy rights in the suit property in the eyes of law and therefore he is *de jure* in possession of the suit premises. He submitted that, the Respondents/Revision Applicants have already initiated certain litigations against MHADA and other Authorities.

5 In view of the submissions made by Mr. Deo, learned counsel for the Respondents/Revision Applicants and recorded hereinabove and when it was observed by this Court that, the Respondents/Revisional

Applicants are reluctant to pay interim compensation to the Applicant, this Court after considering further submissions of Mr. Kadam, suggested Respondents to vacate the suit premises with immediate effect and hand over its possession to the Applicant/Original Respondent/landlord. It was also informed to him that, in case the Respondents/Revision Applicants succeed in the Revision Application, the Applicant/Original Respondent/landlord will restore its possession under the Orders of this Court. The said suggestion was not accepted by the Respondents/Revision Applicants.

6 Be that as it may. Perusal of record of the present Application would indicate that, except denying the contentions of the Applicant/Original Respondent, the Revision Applicants have not produced on record any other document or report to counter the Valuation Report submitted by the Applicant. The Respondents/Revision Applicants have not taken any pains to produce on record any other Valuation Report or comparative instances of letting a premises in the vicinity admeasuring about 2500 square feet or its nearabout. According to this Court, the Valuation Report submitted by Lakdavala & Associates dated 22nd June, 2018 has gone practically unchallenged and has to be accepted.

7 Even otherwise, the suit premises is a commercial premises situated on the ground floor facing the main road. It is situated at Bhandari Street, Mumbai-3, a commercial hub located in the heart of the Mumbai

city. It is a well-known fact that, there is a scarcity of commercial premises of larger area in the City of Mumbai and therefore the suit property may fetch much more rent or monthly compensation than what has been stated by the Valuer in its Valuation Report dated 22nd June, 2018.

8 In view thereof and after perusing the Valuation Report submitted by Lakdavala & Associates which mentions that, monthly fair rent which the suit premises may fetch is approximately Rs.8 lakhs, the same can be fixed for the suit premises. As fair and rational valuation of the rent which the suit premises may fetch is given by the said Valuer, there is no reason for this Court to disbelieve the said Valuation Report dated 22nd June, 2018.

9 Though the learned counsel for the Applicant/Original Respondent has claimed compensation from 7th February, 2018 i.e. the date of Judgment and Order passed by the Appellate Court in Appeal No. 85 of 2007, to test the bonafide of the Respondents/Original Revision Applicants, this Court thinks it appropriate to direct him to deposit arrears of compensation in the Registry of this Court, from 15th January, 2020 i.e. the date on which the present Revision Application is admitted by this Court, @ Rs.8 lakhs per month till 31st December, 2021 within a period of four weeks from the date of uploading of the present Order on the official website of Bombay High Court.

10 During the pendency of Revision Application, the Respondents/ Revision Applicants are further directed to continue to deposit the said compensation in the Registry of this Court on or before 10th day of every month.

11 Interim Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)

SANJIV SHARNAPPA MASHALKAR

Digitally signed by SANJIV SHARNAPPA MASHALKAR
Date: 2021.12.27 15:02:13 +0530