

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

WRIT PETITION NO.2042 OF 2021

Shri Shanti Textile Mills Pvt. Ltd. & Ors. ...Petitioners

V/s.

Chhabhaiya Developers ...Respondent

Mr. Anil Anturkar, Senior Advocate i/b Yatin Malvankar for Petitioners.
Mr. Rajesh Patil a/w Ms. Jeenal Upadhyay for Respondent.

CORAM : A. S. GADKARI, J.
DATE : 15th JULY, 2021.
(Through Video Conferencing)

PC.:

1. By the present Petition under Article 227 of the Constitution of India, the Petitioners/tenants have impugned Order dated 2nd March 2021, passed below Exhibit-6 in P Appeal No.390 of 2019 in T.E. Suit No.180/209 of 2007, by the Appellate Court of the Small Causes at Mumbai, thereby fixing interim mesne profits pertaining to the suit premises, while granting stay to the operation and execution to the Judgment and Decree dated 20th February 2019 passed in T.E. Suit No. 180/209 of 2007.

2. Heard Mr. Anturkar, learned senior counsel for the Petitioners, Mr. Patil, learned counsel for Respondent landlord. Perused record annexed to the Petition.

3. Record indicates that, the Respondent had filed T.E. Suit No.180/209 of 2007 for eviction, removal of construction and enquiry into mesne profit in respect of the suit property against the Petitioners, in the Court of Small Causes at Mumbai.

Learned Judge of the Trial Court decreed the said suit with costs by its Judgment and Order dated 20th February 2019 and has directed the Petitioners to handover vacant and peaceful possession of the suit property in favour of the Respondent. The Trial Court has also directed to conduct an enquiry into mesne profit as contemplated under Order 20 Rule 12 of the Code of Civil Procedure, from the date of termination of tenancy i.e. from 1st July 2007, till delivery of possession of the suit property.

4. Feeling aggrieved by the Judgment and decree passed by the Trial Court, the Petitioners preferred P Appeal No.390 of 2019 before the Appellate Court of the Court of Small Causes at Mumbai.

The Petitioners also filed an Application below Exhibit-6 for grant of stay to the operation of Order and decree passed in T.E. Suit No.180/209 of 2007, pending the said Appeal. The Respondent filed its reply below Exhibit-8 and opposed the said Application.

5. The record further indicates that, both the parties submitted their valuation reports with respect to the suit property showing its market

value and fair rent, which the suit property may fetch in open market. It is the case of the Respondent that, as per the valuation report of H.S. Hariani dated 4th July, 2019, the reasonable monthly compensation amount which the suit property may fetch in open market, would be around Rs.19,46,340/- per month. The Petitioner also submitted valuation report of Mr. K.D. Vakharia dated 16th October, 2019. As per the said report, the total value of plot of land is Rs.1,89,63,878/- and the rental income would be Rs.1,97,261/- per anum = Rs.16,439/- per month. The Appellate Court by its impugned Order has fixed Rs.2,50,000/- per month as interim mesne profits to be paid by the Petitioners to the Respondent with respect to the suit property.

6. Mr. Anturkar, learned senior counsel for the Petitioners submitted that, the Appellate Court has fixed interim mesne profits at a rate which is approximately 24 thousand times more than the contractual rate. He submitted that, the interim mesne profit @ Rs.2,50,000/- per month is certainly on higher side and is also an onerous condition, imposed by the Appellate Court upon the Petitioners. He, therefore prayed that, some reasonable compensation may be directed to be paid by the Petitioners to the Respondent.

Per contra, Mr. Patil, learned counsel for Respondent, vehemently opposed the present Petition and submitted that, the suit

property is admeasuring about 1645 sq.mtrs. and is situated adjacent to L.B.S. Road, Ghatkopar, a prime location in Mumbai. That if it is given on rent today to a new tenant, the Respondent would fetch much more amount than Rs.2,50,000/- per month. He submitted that, the Appellate Court has fixed a very reasonable amount towards interim mesne profits and therefore this Court may not interfere with the impugned Order and the compensation so fixed may not be reduced.

7. Perusal of record further indicates that, as per the valuation reports submitted by the learned Advocate for the Petitioners and Respondent before the Appellate Court, the fair rent as per Ready Reckoner has been calculated approximately @ Rs.17,770/- per sq.mtr. per month for the suit property. The Appellate Court in para No.17 of the impugned Order has given a comparative table of both the valuers' reports.

8. After taking into consideration the fact that, the Petitioners are enjoying stay to the decree of eviction, the location of the suit property, which is adjacent to L. B. S. Road, Ghatkopar, Mumbai, a major arterial road and one of the prime locations in the city of Mumbai, and the total area of said property in use and occupation of the petitioners, this Court is of the view that it will be appropriate in the interest of justice to fix the interim compensation/interim mesne profits pertaining to the suit

property @ Rs.1,85,000/- per month to be paid by the Petitioners to the Respondent.

9. At this stage, learned counsel for the Petitioners submitted that, the Petitioners have been directed to pay the interim mesne profits from the date of passing of the decree and a substantial amount is to be deposited by the Petitioners in the Appellate Court. He, therefore, seeks some reasonable time to deposit the said amount in the Registry of the Appellate Court.

10. In view thereof, the Petitioners to deposit the entire arrears of the interim mesne profits as of 31st July, 2021 in the Registry of the Appellate Court within a period of eight weeks from today.

It is made clear that, no further extension of time to deposit the said amount will be granted on any count.

Clause Nos.2(a), 2(c) and 2(d) of impugned Order dated 2nd March 2021, are accordingly modified to that extent. Rest of the operative part of the impugned Order is maintained.

11. Petition is partly allowed in the aforesaid terms.

(A. S. GADKARI, J.)