

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.3746 OF 2022**

Rustom Kaikhushroo Engineer (since deceased)

Through His LR.

.... Petitioner

Versus

Ajita Ranjit Madhavji & Ors.

.... Respondents

Mr. V.Y. Sanglikar a/w. Mr. Tushar Dahibawkar & Rita Dedhia i/b. M/s. Dahibawkar & Co. for the Petitioners.

Mr. P.S. Dani, Sr.Adv. a/w. Ms Puja Tukrel i/b. Raj Baid for Respondent No.1.

CORAM : A.S. GADKARI, J.

DATE : 22nd APRIL, 2022

PC. :

The Petitioner tenant has impugned Order dated 23rd December 2021 passed below Exh.6 in Appeal No.150 of 2019 in R.A.E.Suit No.1038/1876/1998, under Order 41, Rule 5 of the Code of Civil Procedure, 1908, thereby fixing interim compensation @ Rs.1,15,000/- per month during the pendency of the appeal preferred by the present Petitioner.

2. Heard Mr. Sanglikar, learned counsel for the Petitioner and Mr.Dani, learned counsel for Respondent No.1. Perused record.

3. It is an admitted fact on record that, the suit premises is admeasuring approximately 1500 sq.ft and is located in one of the best localities in Mumbai. The Valuation Report produced by the Respondent

landlord mentions the fair market rate which the suit property may fetch as about 2,82,500/- per month. The Valuation Report produced by the Petitioner mentions that, the suit property may fetch appropriately Rs.22,787/- per month as fair rent in the open market. There is vast variance in the valuation given by two different Valuers suggesting the fair market rent of the suit property.

4. Perusal of impugned Judgment and Order indicates that the Appellate Court after considering the location of property, its area and the fair market rent which the suit property may fetch, has come to the conclusion and directed the Petitioner to deposit a sum of Rs.1,15,000/- per month as interim compensation apart from monthly rent of the suit property.

As noted earlier, the suit premises is located in one of the best upscale localities in Mumbai. It is admeasuring appropriately 1500 sq.ft. As a matter of fact, if the suit property is given on rent to anybody else in open market, it may fetch much more amount towards fair rent to the Respondent and therefore according to this Court, the interim compensation fixed by the Appellate Court appears to be absolutely reasonable and rational. However taking into consideration the extensive and elaborate arguments advanced by the learned Advocate Mr. Sanglikar for the Petitioner and a reasonable request made by him, this Court thinks

it appropriate to fix the interim compensation of the suit premises @ Rs.1,00,000/- (One Lakh only) per month during the pendency of the said Appeal.

5. At this stage, Mr. Sanglikar, learned counsel on instructions from the Petitioner who is present in the Court submitted that, the Petitioner will clear entire arrears as of 30th April 2022 within a period of six months from today by depositing it in the Registry of the Appellate Court. The said statement is accepted as an undertaking given to this Court. However the Petitioner is directed to deposit further compensation from the month of May 2022 onwards in the Registry of the Appellate Court on or before 10th day of each month without fail.

6. The impugned Order dated 23rd December 2021 is modified to the above extent. Rest of the operative part of impugned Order is maintained.

7. Petition is partly allowed in the aforesaid terms.

(A.S. GADKARI, J.)