

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

WRIT PETITION NO.9093 OF 2022

Santaram Bhikaji Hodbe	..Petitioner
Versus	
Vithal Shankar Nalawade	..Respondent

**WITH
WRIT PETITION NO.9094 OF 2022**

Mr. Rajaram Appa Kannade	..Petitioner
Versus	
Mr. Vithal Shankar Nalawade	..Respondent

Mr. Sunilkumar J. Kanoujia for the Petitioner in both the WPs
Mr. Umesh Desai, for the Respondent in both the WPs

CORAM : NITIN W. SAMBRE, J.

DATED : 11th AUGUST, 2022

P.C.:

1. In both the above petitions, common issue is involved. Hence for the purpose of disposal of both the petitions to be decided by this common order, facts in Writ Petition No. 9093 OF 2022 are considered.

2. The petitioner suffered a decree for eviction which is subject matter of challenge in Appeal No. 41 of 2020. In the said proceedings the petitioner has taken out application seeking stay to the execution of the judgment and decree. The said request

came to be allowed and the judgment and decree dated 23/08/2019 passed in RAE Suit No. 883 of 1997 is stayed subject to the petitioner depositing an amount of Rs.5,000/- toward compensation. The amount was directed to be deposited from 23/08/2019 with further directions to continue to deposit the said amount on or before 10th of each succeeding month in the Court.

3. The prayer of the petitioner to review the said order and also seeking stay to the order of award of compensation came to be rejected vide order below Exhibit-21 and Exhibit-23 passed on 31/03/2022 and 23/06/2022.

4. As such, this petition against the aforesaid three orders i.e. order passed below Exhibits-7 & 9, Exhibit-21 & Exhibit-23.

5. The contentions are the petitioner is willing to pay compensation @ Rs.3,000/- which is prevailing in the area. He would urge that the area which is in possession of the petitioner is 10 X 10 ft. It is claimed that the petitioner is enjoying the said property at monthly rent of Rs.38/- and sudden rise in the amount of accommodation/compensation will unrest the financial budget of the petitioner.

6. The counsel then would urge that the reliance placed on the leave and license agreement dated 12/06/2019 is wholly

misplaced as the premises in the said documents are altogether different than the one which is occupied by the petitioner and as such there cannot be a comparison.

7. The learned counsel for the respondent would support the order on the ground that the prevailing market rate of compensation in the area is between Rs.9,000/- to 15,000/- per month with an advance deposit of three months leave and license charges.

8. According to him, the Court below was sensitive to the fact that there exist decree of eviction against the petitioner and as such the petitioner should pay the compensation based on the prevailing market rate which is established through the aforesaid leave and license agreement.

9. I have appreciated the aforesaid submissions.

10. The fact remains that the leave and license agreement dated 12/06/2019 does not specify the area of the room. In case in hand the area of the room is informed to be 10 X 10 ft. As a sequel of above, I am informed that the petitioner is willing to pay the amount of compensation of Rs.3,000/- per month as against the Rs.5,000/- awarded by the Trial Court. So as to show bonafide the petitioner has shown a Demand Draft of Rs.1,08,000/- in each of

the matter.

11. In the aforesaid background, what can be noticed is the area of the room occupied by the petitioner is 10 X 10 ft and the compensation awarded of Rs.5,000/- is based on the leave and license agreement which speaks of license fees of Rs.9,000/- per month. As the area in the said leave and license agreement is not specified, it will be appropriate in my opinion to reduce the amount of compensation from Rs.5,000/- to 3,500/- per month.

12. The statement of learned counsel for the petitioner that he shall deposit the amount of Rs.1,08,000/- in the pending appeal within a period of two weeks from today is expected as an undertaking.

13. His further statement that the difference of amount shall be deposited within a period of four weeks thereafter in the pending appeal is also accepted. He further assures this Court that on or before 10th of each English calendar month he shall continue to deposit an amount of Rs.3,500/- in Appellate Court is also accepted as an undertaking.

14. A single default on the part of the petitioner to deposit the amount of compensation will give leverage the respondent/decreed holder to execute the decree against the petitioner.

15. As the respondent is litigating for his right since last more than 25 years the hearing of the appeal is expedited and the hearing of the appeal be concluded in any case within a period of one year from today.

16. Both the petitions are disposed of in the aforesaid terms.

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by ANANT
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Date: 2022.08.18
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(NITIN W. SAMBRE, J.)