

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

WRIT PETITION NO.10834 OF 2022

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Adani Electricity Mumbai Limited

..Petitioner

Versus

Acme Plastic Industries & Ors.

..Respondents

Mr. Sharan Jagtiani, Senior Advocate a/w Shrey Faterpekar, Sumit Nankani i/by Kavisha Shah, for the Petitioner.

Mr. Hasan Sayed i/by Rafique A. Shaikh, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 21st OCTOBER, 2022

PC.

1. Heard respective counsels.

2. The challenge in the petition is to the order dated 13th July, 2022 passed below Exh.6 in P. Appeal No.56 of 2022. Vide impugned order the application of the petitioner/appellant before the Appellate Court and defendant/tenant before the Small Causes Court for grant of stay to the execution of judgment and decree for eviction delivered in TE Suit No.99 of 2009 decreed on 13th January, 2022 is stayed till the final decision of appeal subject to deposit of interim compensation at the rate of Rs.35,000/- per month to be paid from 13th January, 2022.

3. The respondent alleging to be owner of the suit property

initiated above referred suit for eviction of the appellant/defendant alleging that he is the owner of the suit property and the appellant/defendant is a monthly tenant occupying 403 sq.ft of ground area. It is claimed that the tenancy of the petitioner was terminated vide advocate's letter dated 2nd November, 2006 and 20th August, 2008. It is claimed that the suit premises were let out to the defendant No.2 as could be inferred from the letter dated 2nd June, 1993, whereby rent was offered. It is claimed that the defendant No.2 has shifted its ownership to the Reliance Energy on or about 24th February, 2004.

4. Defendants have placed on record their written statement at Exh.28 and additional written statement at Exh.18. The Trial Court accordingly framed issues about the valid termination of tenancy, entitlement for possession, so also recovery of mesne profit and decreed the suit in favour of the respondent/plaintiff.

5. The petitioner/defendant No.1(a) preferred an appeal being Appeal No.56 of 2022 before the Small Causes Court Appellate Bench with an application Exh.6. Vide impugned order dated 13th July, 2022, same came to be allowed.

6. While questioning the order impugned, Mr. Sharan Jagtiani, learned senior counsel would urge that the status of the petitioner as that of the tenant is not in dispute. However,

according to him, as per the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021, particularly clause 6.5, the respondents are not entitled to claim rent/lease amount of more than Rs.1/-. According to him, regulation further provides for the 'FSI 0' structure that is to say FSI consumed for the sub-station is not counted in the maximum FSI available on the property in question. He would further urge that once the occupation charge of Rs.1/- is statutorily provided, condition to which the petitioner is put of depositing compensation of Rs.35,000/- is illegal. He would also urge that for awarding compensation of Rs.35,000/- per month, no basis or evidence is considered.

7. In response to the Court's query, Mr. Sharan Jagtiani, learned senior counsel appearing for the petitioner would urge that the petitioner is willing to pay monthly compensation of Rs.3,000/- per month as is instructed by the petitioner.

8. Counsel for the respondents based on the observations of the Trial Court in the decree, so also the interpretation of the aforesaid provisions of the Code would urge that the difference between the tenancy and the lease is to be appreciated. According to him, the petitioner has failed to demonstrate that the structure is based on 'FSI 0' regulation. He would further urge that the award of compensation is based on the provisions of Order XV-A of the

Bombay amendment to CPC, so also the judgment of Apex Court in the matter of *Atmaram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.* reported in *(2005) 1 SCC 705*. As such, he has sought dismissal of the petition.

9. I have appreciated the submissions.

10. *Prima-facie* it can be borne out of the findings of the Trial Court that the status of the petitioner as that of tenant is admitted on record. The fact remains that it was defendant No.2 who was initial tenant in the suit property and the present petitioner has taken over the profiteering business of energy distribution licence. The fact remains that the petitioner as such can be recognized as tenant and as such has made it liable to pay rent to the respondent/landlord.

11. The reliance placed on the provisions of the regulation as referred to above, particularly clause 6.5 and also in relation to 'FSI 0 principle', the petitioner has failed to demonstrate that the aforesaid clause 6.5 of the regulation gives protection in favour of the petitioner. Rather the said clause deals with the lease agreement and not the tenancy. As such, the protection sought under the aforesaid provisions cannot be said to be available to the petitioner.

12. The fact remains that the petitioner has come out with a

case that the FSI consumed on the area over the sub-station which is in operation is excluded from the FSI of the plot. However, such plea was neither claimed nor established before the Court below or even at the time of hearing of the present petition, as the petitioner has failed to discharge such burden. As such, it has to be held that the petitioner is liable to pay compensation for occupying the suit premises.

13. However, while determining the amount of compensation of Rs.35,000/-, there is hardly any material placed on record by either of the parties to substantiate the claim for an amount of Rs.35,000/- per month. While determining such amount of compensation, same should have some foundation in the form of evidence which is absent in this case, as both the parties have failed to place on record of Trial Court material in support of their rival claim. As such, the amount of Rs.35,000/- of compensation ordered to be paid by the petitioner to the respondent has to be held without any legal basis.

14. As such, the matter to the aforesaid extent i.e. to the extent of determining quantum of compensation needs to be reconsidered. In this background, following order is passed :-

- a) The order of the Appellate Court dated 13th July, 2022 to the extent of ordering payment of compensation of Rs.35,000/- is set aside and same is substituted with payment of compensation of Rs.3,000/- as is conceded by

counsel for the petitioner on instructions.

- b) Parties hereto are directed to submit their evidence in support of the claim for determination of compensation within period of eight weeks from today. Once such documentary evidence is produced, the Appellate Court is directed to redetermine the quantum of compensation to be paid by the petitioner to the respondent/landlord within period of eight weeks thereafter.
- c) Till such period the issue is determined by the Appellate Court, the petitioner shall deposit entire arrears at the rate of Rs.3,000/- from the date of decree till this date in the Appellate Court within a period of six weeks. The petitioner shall continue to deposit the said amount of compensation of Rs.3,000/- on or before 10th of each English calendar month.
- d) Till the decision is taken by the Appellate Bench, the interim order passed by the Appellate Bench staying execution of the decree is continued.

15. The petition as such stands partly allowed in above terms.

[NITIN W. SAMBRE, J.]