

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14578 OF 2022

Pravin Mansukhlal Doshi

...Petitioner

Versus

Amit Dhankumar Jhaveri & Ors.

...Respondents

Mr. A.S. Khandeparkar a/w Mr. Saurabh Mittal, Mr. Rushikesh Bhagat, Mr. Vaibhav Kulkarni i/by Khandeparkar & Associates for the Petitioner.

Mr. Rohan Savant i/by Mr. Mohanish Ghatge for the Respondent Nos. 1 to 7.

CORAM : R.I. CHAGLA J

DATE : 15 December 2022

ORDER :

1. Heard learned Counsel for the parties.
2. By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner has challenged the order dated 28th June 2022 passed by the Appellate Bench of Small Causes Court, at Mumbai in Appeal No. 262 of 2019. The main ground of

challenge is that though the execution and operation of impugned judgment and decree dated 6th March 2019 passed by the Trial Court in R.A.E. & R. Suit No. 515/944 of 2004 was stayed, the Petitioner herein is aggrieved by the deposit which has been directed by the Appellate Bench which is in the sum of Rs. 1,00,000/- per month payable from 6th March 2019.

3. Mr. Khandeparkar, learned Counsel appearing for the Petitioner has taken this Court to the findings in paragraph 11 of the impugned order. In paragraph 11, the Appellate Bench had considered that reliance was placed by the Respondents/original Plaintiffs on premises in Ratnakar Palace situated opposite Chowpatty Sea Face, Girgaon Chowpatty, Mumbai. The Appellate Bench had upon comparison of that premises with the location of the suit premises, which is at C.P. Tank, come to finding that the premises on which reliance has been placed by the Respondents/original Plaintiffs would certainly fetch more amount than the suit premises.

4. The Respondents herein had sought to place reliance on an order passed in (2a) Appeal No. 3 of 2019, wherein the area of those premises was 250 sq.ft. The Appellant Bench found that the

order was not binding on the Court. Further, there is a dispute with regard to the area of the suit premises. The Petitioner herein has alleging it to be 150 sq.ft. and Respondents alleging it to be 250 sq.ft. The Appellate Bench has thereafter, taken into consideration the instance given by the Respondents herein, location, user of the suit premises and by doing guess work, was of the view that the suit premises would certainly not fetch market rent more than Rs. 1,00,000/- per month in the present days. The Petitioner was accordingly, granted stay of execution of the impugned decree subject to deposit of compensation at Rs. 1,00,000/- per month from the date of decree till final disposal of the Appeal.

5. Mr. Khandeparkar has submitted that this finding of the Appellate Bench is purely on conjecture and surmise and without any valuation reports being produced. In fact, there is an observation of the Appellate Bench, that both parties have not produced on record any single document nor there is any pleading about the exact area of the suit premises. He has accordingly, suggested that both the parties may appoint their respective valuers to value the suit premises and arrive at the market rent which would be fetched per month in respect of the suit premises.

6. Mr. Savant, learned Counsel appearing for the Respondents has submitted that the Petitioner herein has till date not deposited any amount of interim compensation which had been directed by the Appellate Bench. He has submitted that the case made out by the Respondents before the Trial Court has been accepted and that in view of the stay operating against execution of the decree passed by the Trial Court in R.A.E. & R. Suit No. 515/944 of 2004, the Petitioner is residing in the suit premises.

7. Mr. Savant has submitted that the Supreme Court in **Atmaram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.**¹ and **State of Maharashtra & Anr. Vs. M/s. Supermax International Pvt.Ltd.**² has held that there is every justification of the Appellate Court to put the Appellant/tenant to terms and direct the Appellant to compensate the landlord by payment of reasonable amount which is not necessarily same as per the contractual rent. The tenant occupying the tenancy premises after termination of the tenancy is in unauthorised or wrongful occupation and a decree in respect of mesne profits can be passed for the period of such occupation till he

1 (2005)1 SCC 705

2 2009(9) SCC 772

delivers vacant possession to the landlord. The fixing of interim compensation requires common sense and common knowledge by judicial experience and judicially noticeable facts over and above the material available on record. This is an exercise of discretion while passing an order and formulating the terms for the parties.

8. Mr. Savant has submitted that the Appellate Bench has used such common sense and common knowledge of events gathered by judicial experience and judicially noticeable facts as well as considered the instance which had been relied upon by the Respondents/original Plaintiffs and had in fact found that the instance relied upon by the Respondents/Plaintiffs would certainly have fetched more amount than the suit premises situated in the area of C.P. Tank. Accordingly, the market rent was fixed at a lower rate in respect of the suit premises. He has submitted that in the event the Court is inclined to direct the parties to appoint their respective valuers to value the suit premises, the Petitioner herein should be put to terms including deposit of ad-hoc compensation till such exercise is carried out by the respective valuers.

9. I have considered the submissions. The Appellate Bench

has observed that neither the parties have produced on record any single document nor was there any pleading as to the exact area of the suit premises. There was a dispute as to the exact area of the suit premises. The Petitioner had alleged the suit premises to be 150 sq.ft. whereas Respondents alleged it to be 250 sq.ft. The Appellate Bench would have been advised to appoint a valuer or leave it to the parties to appoint their respective valuers for ascertaining the exact area of the suit premises as well as the interim compensation.

10. The Appellate Bench in fixing an interim compensation Rs. 1,00,000/- per month, had conceded that it was doing permissible level of guess work. The Appellate Bench had also not accepted the reliance placed by the Respondents on the premises namely Ratnakar Palace situated opposite Chowpatty Sea Face, Girgaon Chowpatty, Mumbai as being comparative to the suit premises and in fact, found that the said premises would certainly fetch more than the suit premises which is situated in area of C.P. Tank. The Appellate Bench has also found that the order in (2a) Appeal No. 3 of 2019 is not binding on the Court, as in that case, the area of the premises was 250 sq.ft.

11. In view of the findings of the Appellate Bench, the interim compensation at Rs. 1,00,000/- per month cannot be accepted and the parties in the Writ Petition and the Respondent herein are required to appoint their respective valuers to value the suit premises including determination of the area of the suit premises for arriving at the market rent per month which the suit premises would fetch. Hence, the following order is passed. :-

- (i) The impugned order to the extent that it fixes compensation at Rs. 1,00,000/- per month in respect of the suit premises is set aside.
- (ii) The Petitioner and the Respondents shall appoint their respective valuers for valuing the suit premises as well as determining the area of the suit premises and which shall be done within a period of two weeks from the date of uploading of this order.
- (iii) The Appellate Bench of the Small Causes Court is requested to consider the respective valuations arrived at by the Petitioner and the Respondents through their

respective valuers within the period of two weeks from the receipt of the valuation reports and fix the monthly interim compensation.

- (iv) The Petitioner is put to terms that upon the Appellate Bench of the Small Causes Court, determining the interim compensation, he shall accept the interim compensation payable and deposit the same.
- (v) The execution and operation of the impugned decree dated 6th March 2019 is stayed, subject to compliance with the order.
- (vi) In view of the Appeal being finally heard by the Appellate Bench of the Small Causes Court, and for which the dates have been fixed in January, the Appellate Bench is requested to hear the Appeal expeditiously and that this order will not come in the way of the Appellate Bench of the Small Causes Court hearing the Appeal.

(vii) It is clarified that this order will not effect any of the orders passed by the Appellate Bench of the Small Causes Court other than the impugned order.

(viii) Writ Petition is accordingly, disposed of in the above terms.

[R.I. CHAGLA J.]