

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

CIVIL WRIT PETITION NO.1102 OF 2022

The Municipal Corporation of
Greater Mumbai & Anr. Petitioners
Versus
Kaiful Abdul Rauf Respondent

Mr. Vijay Patil a/w Om Suryawanshi i/b Sunil
Sonawane for the Petitioners-MCGM.
Mr.Ziyad Madan i/b Shabnam Latiwala for
Respondent.

**CORAM: M.G. SEWLIKAR, J.
DATE : 17th JUNE, 2022**

P.C. :

1. The Petitioners are challenging the order passed by the Appellate Bench of the Court of Small Causes at Bombay below Exhibit 6 in Appeal NO.6 of 2020 in RAE & R Suit No.448/756 of 2012.

2. The facts giving rise to the Petition are that, the Respondent is the original Plaintiff and the landlord of the premises in question. The Petitioner-Municipal Corporation is the tenant.

3. The Respondent-landlord instituted a suit for eviction of the Petitioners-Municipal Corporation on the ground of non user and default in payment of rent. The learned Court of Small Causes, granted decree of eviction on both counts by order dated 4th December, 2019. The Petitioners preferred Appeal before the Appellate Bench of the Court of Small Causes at Bombay against this Decree.

4. In the said Appeal, the Petitioners filed an application for stay to the execution of the impugned Decree dated 4th December, 2019 passed by the Court of Small Causes in the above referred suit. The learned Appellate Bench stayed execution of the decree subject to deposit of Rs.75,000/- per month as interim compensation in the Court from the date of Decree until final decision of the Appeal. This order is under challenge in this Petition.

5. The learned counsel for the Petitioner submits that the impugned order is illegal. He invited attention of this Court to the observations made in Para 13 of the impugned order. He submits that the observations are contrary to record. He further submits that the premises are in dilapidated condition and, therefore, fixing hefty amount of Rs.75,000/- as interim compensation is totally unwarranted. He seeks quashing of the said order.

6. The learned counsel for the Respondent-landlord submits that the premises are not in dilapidated condition. The premises have been repaired by MHADA. The Respondent-landlord is claiming compensation at the rate of Rs.75/- per square foot. The area in possession of the Petitioners is 3190 sq. ft. He submits that considering the amount claimed by the respondent, the interim compensation is too meager.

7. With the assistance of both the learned counsels, I have gone through the impugned order. The learned Appellate Bench of the Court of Small Causes has given cogent reasons. In Para 15, the learned Appellate Bench has observed that the Decree is passed on the ground of non user of the premises in question. It has observed that according to the tenant (Petitioners herein) the premises were in dilapidated condition and the Petitioners are not able to enjoy the possession of the premises in question. Considering the fact of poor maintenance of the suit premises, the Appellate Bench came to the conclusion that interim compensation at the rate of Rs.75,000/- would be the appropriate amount. The learned Appellate Bench placed reliance on the case of **Super Max International P. Limited vs. State of Maharashtra & Anr. reported in 2008 SC OnLine Bom. 1005**, in which this Court had granted 6% return annually.

8. On this basis, the learned Appellate Bench quantified the amount of RS.75,000/-. I do not see any error in quantifying the amount of Rs.75,000/-. The Petition is misconceived. It is devoid of any substance. The learned Appellate Bench has given cogent reasons for fixing interim compensation.

9. In this view of the matter, the Petition is dismissed with no order as to costs.

(M.G. SEWLIKAR, J.)