



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.507 OF 2021
IN
WRIT PETITION NO.11052 OF 2019

Jayashri Ketmal Bafna & Anr.	...Applicants
In the matter of	
Govind Bhausahab Kadam	...Petitioner
<u>Versus</u>	
Jayashree Khetmal Baftna & Anr.	...Respondents

Mr. G. S. Godbole Sr. Adv., i/b Mr. Vilas B Tapkir for the Applicants
in IA and for the Respondents In WP.

Mr. Mayur D. Joglekar for the Respondents in IA and for the
Petitioner in WP. (through VC).

CORAM : SHARMILA U. DESHMUKH, J.
DATE : NOVEMBER 1, 2023

P. C. :

1. Heard.
2. Interim Application has been preferred by the Applicants-
Respondents seeking a direction to the Petitioner to pay compensation of
Rs. 25,000/- per month to the Respondent landlords.
3. Mr. Godbole, learned Senior Advocate for the Applicant-

Respondents landlord has pointed out the order of this Court dated 5th March, 2020 admitting the Writ Petition and granting liberty to file an Application for compensation during the pendency of the present Petition, as the impugned decree has been stayed. To support his case for compensation of Rs. 25,000/-, he points the comparable instances of registered Leave and License Agreements which are annexed at page No. 39 and page No. 55 of the Interim Application. He submits that, the undisputed position is that, the suit premises is admeasuring 240 sq.ft. and the comparable instance is of a shop admeasuring 140 sq. ft for which the agreed compensation is Rs. 37,000/- per month with escalation. As regards the second comparable instance, the same is in respect of a shop admeasuring 180 sq. ft. with the monthly compensation fixed at Rs. 25,000/- with escalation. He relies upon the decision in the case of *M/S. Atma Ram Properties (P) Ltd vs M/S. Federal Motors Pvt. Ltd., [(2005) 1 SCC 705]* in support of his claim for enhanced compensation.

4. *Per contra*, learned Advocate for the Petitioner submits that, the Application itself is not maintainable as there is no decree of eviction which has been passed and therefore the decision in the case of *M/S. Atma Ram Properties (P) Ltd., (supra)* is not applicable. He would further submit that, the comparable instances which have been produced on record cannot be relied upon in the absence of any opportunity of cross-

examination being given to the Respondents. He would further submit that, the present Petition is Writ Petition and the decision in the case of *M/S. Atma Ram Properties (P) Ltd.*, is applicable to Appeal.

5. In rejoinder, Mr. Godbole would point out that, as far as the Petitioner is concerned, the Petitioner claims to be the adopted son of the Original Tenant which findings has been held against the Petitioner in the Appellate Court.

6. Considered the submissions and perused the records.

7. The Application has been filed pursuant to the liberty which has been rightly given by this Court vide order dated 5th March, 2020 whereby, the ad-interim relief was granted staying the execution of the impugned judgment and order dated 15th February, 2019 passed by the Appellate Court. The decision in the case of *M/S. Atma Ram Properties (P) Ltd. vs M/S. Federal Motors Pvt. Ltd.*, deals with such a situation where at the time of passing an order of stay, the Appellate court has the jurisdiction to put the Applicant to such terms as would liberally compensate the decree holder for the loss occasioned by delay in execution of decree by grant of stay order.

8. In the present case while admitting the Petition, there has been a stay granted to the execution of the decree which decree of eviction was in

favour of the Respondent-landlord. There is no merit in the contention of learned Advocate for the Respondent that, the decree of the Appellate Court is not a decree for eviction. By the said decree the Appellate Court has held that, in view of determination of tenancy, the Plaintiffs have a right of pre entry in the suit premises. The suit itself was for recovery of possession of the premises under Section 16(1)(i) of the Maharashtra Rent Control Act.

9. As regards the comparable instances which have been placed on record the lease deed which is at page No. 55 pertains to the same period i.e. of the year 2019 and in the same building as regards a shop admeasuring 180 sq. ft. In exercise of the power of grant of stay, the Appellate Court has the discretion to put the judgment debtor to such terms as may reasonable as a condition precedent for stay. In that view of the matter, the Applicant is entitled to compensation of Rs. 25,000/- per month with escalation in the monthly rent at the same terms as in the lease deed which is at page No. 55 i.e. increase in the monthly rent by 15% after every three years without any deduction save statutory charges.

10. Interim Application is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)