



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11005 OF 2023

Vasant Pukaraj Jain.

...Petitioner.

Versus

Vinayak Vithal Katkar and Anr.

..Respondents.

Mr. Ashok B. Tajane i/b Kavita P. Shinde for the petitioner.
Ms. Manjiri Parasnis for the respondents.

Coram : Sharmila U. Deshmukh, J.

Date : October 23, 2023.

P. C. :

1. Heard.

2. By this petition, the challenge is to the order dated 1st February 2023 passed by the appellate Court under Order XLI Rule 5 of CPC granting stay to the decree of eviction subject to payment and deposit of compensation of Rs.7,000/- per month in addition to the agreed rent.

3. Mr. Tajane, learned counsel appearing for the petitioner submits that the direction for payment of compensation @ Rs.7,000/- is unreasonable considering the area and location of premises. He would submit that the appellate Court has not considered the decision in *Atma Ram Properties (P) Ltd v. Federal Motors (P) Ltd*

[(2005) 1 SCC 705] in its correct perspective. He would submit that the Apex Court in *Atma Ram (supra)* was concerned with the premises which were admeasuring 2,000 square feet, fetching a rent of Rs.371/- and the compensation directed was Rs.15,000/- per month. According to him, upon a comparison of the facts of case before the Apex Court with the facts of present case, in respect of the premises admeasuring 80 sq. ft., a direction given to pay compensation of Rs.7,000/- per month is unreasonable.

4. He urges that the decision of appellate Court is a non reasoned decision as it does not have any discussion as regards the comparative compensation in respect of other premises in the vicinity.

5. Considered the submissions and perused the record.

6. The petition has been preferred under Article 227 of the Constitution of India seeking interference with the discretionary power exercised by the appellate Court. It is an admitted position that the petitioner, who is a tenant, has suffered a decree of eviction. In the appellate proceedings, a stay has been granted in favour of the petitioner subject to payment of compensation @ Rs.7,000/- per month in addition to the agreed rent. The premises in question is a commercial premises from which jewellery business is being carried out. In *Atma Ram (supra)* on which reliance is sought to be placed by learned counsel for the petitioner, the Apex Court was considering the

issue as to whether compensation can be directed to be paid in exercise of powers under Order XLI Rule 5 of CPC over and above the contractual rent. It would be pertinent to note the observations of the Apex Court in paragraph no.18 of the said decision, which reads thus :

"18. That apart, it is to be noted that the appellate Court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the tenant-appellant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate Court. While ordering stay the appellate Court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate Court to put the tenant-appellant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In Marshall Sons & Co. (I) Ltd. Vs. Sahi Oretrans (P) Ltd. & Anr., (1999) 2 SCC 325, this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the Court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property."

7. The Apex Court in the said decision has summed up its conclusion by observing that the terms shall be "reasonable". Applying the law laid down by Apex Court to the facts of present case, the appellate Court has exercised its discretion and upon considering the leave and licence agreements of other premises which have been produced by the respondent in respect of the said locality, has granted stay subject to deposit of compensation @ Rs.7,000/- per

month over and above the contractual rent. The impugned order does not demonstrate that any material was produced on record by the petitioner to substantiate the compensation which according to him would be liable to be paid in respect of the premises admeasuring 80 sq. ft. What this Court finds is that the respondents have filed leave and licence agreements of other premises in the locality, which have rightly been taken into consideration by the appellate Court.

8. According to the petitioner, compensation is required to be reasonable. Therefore, it was necessary that the material should be produced before the appellate Court to demonstrate as to what would be reasonable compensation. In the absence of such material being produced before the appellate Court, the discretion which has been exercised by the appellate Court cannot be faulted with. It needs to be noted that decision of the Apex Court in *Atma Ram (supra)* was rendered in the year 2005 and in the facts of that case, the Apex Court had considered that amount of Rs.15,000/- was reasonable. It needs to be noted that in that case, the premises were situated at Delhi and in the instant case, premises are situated in Pune and a commercial activity is being carried out from the said premises. In my opinion, the comparison cannot be on the basis of what the Apex Court did in the case of *Atma Ram (supra)* but what is binding is the ratio which lays down that terms shall be "reasonable".

9. In the light of above discussion, the discretion which has been exercised by the appellate Court does not warrant any interference at the hands of this Court. Petition is accordingly dismissed.

[Sharmila U. Deshmukh, J.]