

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7281 OF 2023

Suresh C. Diwivedi ...Petitioner
Versus
Mahesh VasANJI Gala ...Respondent

WITH
WRIT PETITION NO. 7282 OF 2023

Devraj C. Diwivedi ...Petitioner
Versus
Mahesh VasANJI Gala ...Respondent

Mr. B. P Pandey i/by Ridhima Mangaonkar for the Petitioners.
Mr. Kevin Gala for Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 27th SEPTEMBER, 2023

P.C.:

1. This Writ Petition is filed challenging the Judgment and Order dated 5th April, 2023 passed in stay application at Exhibit-7 of 2023 in Appeal No.34 of 2023.
2. By the impugned order dated 5th April, 2023 the Appellate Bench of the Court of Small Causes has fixed the compensation amount of Rs.6,500/- per month to be paid from the date of the decree passed by the Trial Court till the disposal of the appeal.

3. I have heard the counsel for both the sides, I have gone through the contents of the writ petition and documents produced on record by way of valuation report. Admittedly, the landlord has not produce any valuation report to support his claim for the market rent of the suit premises. It is the case of the Petitioner/Original tenant that the valuation report, which they had obtained, was not taken on record by the Appellate Court as on that day the matter was for passing order.

4. It is the case of the Petitioner that the suit building in an old building and the premises in situated on 5th floor and there is no facility of lift in the said building. It is further stated that the Petitioner is retired person and it is difficult for him to climb 5 floors to reaches the suit premises.

5. The Respondent/landlord as stated that the suit premises is in market area of Fort and the compensation of Rs.6,500/- per month is just and proper.

6. According to me, without any documentary evidence on record the Court has arrived the figure of Rs.6,500/- per month as the monthly compensation payable by the Petitioner. Taking into consideration the age of the building and also the fact that the suit premises situated on 5th floor, where there is no lift available and the fact that the Petitioner is a retired teacher, I fix monthly compensation

at Rs.5,000/- per month payable for the date of Trial Court decree i.e. 10th January, 2023 till the passing of this order, to be deposited within a period of two weeks with the trial Court. The Petitioner shall also further deposit the compensation at the rate of Rs.5,000/- per month till the disposal of the appeal.

7. Writ Petition accordingly disposed of.

8. On the Petitioner depositing the arrears within a period of two weeks, the stay granted by the trial Court will continue till the disposal of the appeal. So also, in case there is default of payment of further compensation for consecutive period of two months, the stay will be automatically stand vacated.

WRIT PETITION NO. 7282 OF 2023

1. This Writ Petition is filed challenging the Judgment and Order dated 5th April, 2023 passed in stay application at Exhibit-7 of 2023 in Appeal No.35 of 2023.

2. By the impugned order dated 5th April, 2023 the Appellate Bench of the Court of Small Causes has fixed the compensation amount of Rs.20,000/- per month to be paid from the date of the decree passed by the Trial Court till the disposal of the appeal.

3. I have heard the counsel for both the sides, I have gone through the contents of the writ petition and documents produced on record by way of valuation report. Admittedly, the landlord has not produce any valuation report to support his claim for the market rent of the suit premises. It is the case of the Petitioner/Original tenant that the valuation report, which they had obtained, was not taken on record by the Appellate Court as on that day the matter was for passing order.

4. It is the case of the Petitioner that the suit building in an old building and the premises in situated on 5th floor and there is no facility of lift in the said building. It is further stated that the Petitioner is retired person and it is difficult for him to climb 5 floors to reaches the suit premises.

5. The Respondent/landlord as stated that the suit premises is in market area of Fort and the compensation of Rs.20,000/- per month is just and proper.

6. According to me, without any documentary evidence on record the Court has arrived the figure of Rs.20,000/- per month as the monthly compensation payable by the Petitioner. Taking into consideration the age of the building and also the fact that the suit premises situated on 5th floor, where there is no lift available and the fact that the Petitioner is a retired teacher, I fix monthly compensation

at Rs.18,000/- per month payable for the date of Trial Court decree i.e. 10th January, 2023 till the passing of this order, to be deposited within a period of two weeks with the trial Court. The Petitioner shall also further deposit the compensation at the rate of Rs.18,000/- per month till the disposal of the appeal.

7. Writ Petition accordingly disposed of.

8. On the Petitioner depositing the arrears within a period of two weeks, the stay granted by the trial Court will continue till the disposal of the appeal. So also, in case there is default of payment of further compensation for consecutive period of two months, the stay will be automatically stand vacated.

(RAJESH S. PATIL, J.)