

WRIT PETITION NO. 8453 OF 2023

Shri Satyawanan Madhukar Labde .Petitioner
Aged : 82 adult Indian Inhabitant
(Original
(Senior Citizen), Residing at Room No. 5, Defendant)
Ground Floor, Tilak Dham, 8-A, Cama Road,
Andheri (West),
Mumbai - 400 058.

Vs.

- | | | |
|-----|---|--|
| 1. | Shri Vasant Govind Tilak (since deceased)
through legal heirs | .Respondents
(Original
Plaintiffs) |
| 1A. | Ms Sunanda Madhavrao Vaidya | |
| 1B. | Mr. Dilip Madhavrao Vaidya
Both Aged Adult, Indian Inhabitant
Residing at 17B, 2 nd Floor, Tilak Dham,
Cama Road, Andheri(West),
Mumbai – 400 058. | |
| 2. | Shri Pradeep Madhavrao Vaidya
Age – 68 years, Occupation – Retired
Having residential address at Opp. Jai
Hind College, Wadi Bhikar Road,
Nehru Nagar, Dhule – 424 002
(Maharashtra) | |

WITH
INTERIM APPLICATION NO. 13248 OF 2023
IN
WRIT PETITION NO. 8453 OF 2023

Shri Satyawan Madhukar Labde .Applicant
Aged : 74 yrs adult Indian Inhabitant (Original
(Senior Citizen), Residing at Room No. 5, Defendant)
Ground Floor, Tilak Dham, 8-A, Cama Road,
Andheri (West),
Mumbai - 400 058.

IN THE MATTER OF

Shri Satyawar Madhukar Labde Aged : 82 adult Indian Inhabitant (Senior Citizen), Residing at Room No. 5, Ground Floor, Tilak Dham, 8-A, Cama Road, Andheri (West), Mumbai - 400 058.	.Petitioner (Original Defendant)
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Vs.

- | | |
|---|--|
| 1. Shri Vasant Govind Tilak (since deceased)
through legal heirs | .Respondents
(Original
Plaintiffs) |
| 1A. Ms Sunanda Madhavrao Vaidya | |
| 1B. Mr. Dilip Madhavrao Vaidya
Both Aged Adult, Indian Inhabitant
Residing at 17B, 2 nd Floor, Tilak Dham,
Cama Road, Andheri(West),
Mumbai - 400 058. | |

Mr. K. L. Vyas i/b. Mr. Karan K. Vyas, Advocate, for the Petitioner
Ms Leena Temkar i/b. Mr. Deepak Jamsandekar, Advocate, for
the Respondents

CORAM : ANUJA PRABHUDESSAI, J.

DATE : 25.08.2023

P. C.

. Rule. Rule is made returnable forthwith. Heard
finally with the consent of the parties.

2. This writ petition filed under Article 227 of the
Constitution of India, impugns order dated 28.03.2019 passed by
the Appellate Bench of the Small Causes Court, Mumbai. By the
impugned order, the Appellate Court stayed the execution of

eviction decree dated 21/12/2017 in R.A.E. Suit No.640/1994 subject to deposit of monthly compensation of Rs.12,000/- from 21.12.2017 till March, 2019 in five equal monthly installments and deposit of compensation of Rs.12,000/- per month from April, 2019 till disposal of the Appeal.

3. The Respondents/Landlords filed a suit for eviction inter alia on the ground of unauthorized construction. The suit was contested by the Petitioner. Upon considering the evidence adduced by the respective parties, the trial court decreed the suit by Judgment and Decree dated 21.12.2017. Being aggrieved by the judgment, the Petitioner filed an appeal before the Appellate Bench of the Small Causes Court. The Petitioner also filed an Application seeking stay of the execution of the decree, pending hearing of the Appeal.

4. The Appellate Court allowed the said Application and stayed the execution and implementation of the impugned Judgment till final disposal of the suit subject to deposit of Rs. 12,000/- per month from the date of the decree till disposal of the Appeal with further direction to deposit the rent at the rate of Rs. 104/- per month from February, 2018 till disposal of the

Appeal. The Petitioner challenges the quantum of compensation, as determined by the Appellate Court.

5. Heard learned counsel for the Petitioner and learned counsel for the Respondents. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

6. In *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.*, reported in *(2005) 1 SCC 705*, the Apex Court observed that once the lease or tenancy stands determined through a decree of a competent court, the tenant's right to continue to possess the leased property ends and for his continued use and occupation of the property for any period thereafter, he must pay damages at the rate the landlord could have let out the premises if there had been no tenant or the tenant had vacated the premises on determination of lease. The Apex Court observed that the Appellate Court has jurisdiction to put the parties seeking stay order on such terms, as would be reasonably compensate the successful party for the loss occasioned by delay in execution of decree by grant of stay order. In *State of Maharashtra v/s. Supermax International Private Limited*

(2009) 9 SCC 772, the Apex Court has cautioned that while awarding compensation, the Court should exercise restraint and should not fix any excessive, fanciful or punitive amount.

7. The issue in the instant case relates to the quantum of compensation fixed by the Appellate Court. It is not in dispute that the Respondents/Landlords had not relied upon Valuation Report and had not placed on record any material justifying compensation of Rs. 12,000/- per month. The Appellate Court has determined the compensation @ Rs.12,000/- per month solely on the basis that the premises are located at Andheri. The said amount cannot be considered as reasonable particularly in view of order dated 09.08.2016 in Appeal No. 25 of 2015 whereby the Appellate Court had directed a tenant to deposit compensation in respect of another premises situated in the same building at the rate of Rs. 3,500/- per month. The previous order was passed in the year 2016 and enhancing the quantum of compensation by 20% in view of price rise/escalation, the compensation of Rs. 4,500/- per month would in my view be just and reasonable.

8. Learned counsel for the Petitioner states that the Petitioner will deposit before the Appellate Bench of the Small

Causes Court, an amount of Rs. 50,000/- within two weeks to show his bona fides and shall deposit the balance arrears as well as the rent within three months from the date of the order. Statement accepted.

9. Under the circumstances, the Petition is partly allowed. The impugned order dated 28.03.2019 passed by the learned Additional Chief Judge, Small Causes Court, Mumbai is modified to the extent that monthly compensation of Rs. 12,000/- per month is reduced to Rs.4,500/- from the date of the decree till final disposal of the Appeal.

(ii) The Petitioner shall deposit Rs. 50,000/- before the Appellate Bench of Small Causes Court, Mumbai within a period of two weeks from the date the order is uploaded and shall deposit the balance amount of interim compensation as well as arrears of rent within a period of three months from the date of this order. The Petitioner shall continue to pay the monthly compensation as well as the rent on the fifth day of every month.

10. Rule is made absolute in the aforesaid terms.

11. In view of disposal of the Petition, the Interim Application No. 13248 of 2023 does not survive and the same

stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)