

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15491 OF 2022

Jatin Harshadrai Mehta

...Petitioner

V/s.

Smt. Mangala Anant Shetye

...Respondents

(deleted since deceased)

1(a) Mr. Mahesh Anant Shetye & Ors.

Mr. K. N. Kandekar, for the Petitioner.

Mr. Uday G. Jaguste, for the Respondents.

CORAM : MADHAV J. JAMDAR, J.
DATE : 19th JANUARY, 2023

P.C.:

1. Heard Mr. K. N. Kandekar, learned counsel appearing for the Petitioner and Mr. Uday G. Jaguste, learned counsel appearing for the Respondents.

2. The impugned order in the present Writ Petition is order dated 19th November, 2022 passed by the learned Appellate Bench of Small Causes Court at Mumbai below Exhibit-7 in Appeal No.221 of 2022 in R.A.E. Suit No.422/720 of 2012. By the impugned order, the Petitioner has been directed to deposit Rs.35,000/- per month from the

date of Decree i.e. 3rd January, 2022 up to 30th December, 2022 within two months from the date of the order and further direction was issued to deposit said amount of Rs.35,000/- with effect from 1st January, 2023 on or before 10th day of each succeeding month and the same payment shall be made till the disposal of the Appeal. In clause No. (iii) of the impugned order, the Additional Registrar, Small Causes Court, Bandra Branch, Mumbai was directed to invest the amount of compensation as and when deposited by the Petitioner in the fixed deposit for the terms of atleast one year in the nationalized bank on the very next working day in accordance with the law and as per the Rule. Learned counsel appearing for the Petitioner is right in pointing out that, the said Additional Registrar, Small Causes Court, Bandra Branch, Mumbai is wrongly mentioned and it should be by the concerned Additional Registrar, Small Causes Court of the main branch and not of Bandra Branch as the matter is pending in the main branch.

3. As far as the merits are concerned regarding determination of said Rs.35,000/-, it appears that, the learned Appellate Court has relied on the agreement dated

5th August, 2022. The said agreement is with respect to non-residential premises which is situated at 'Suryakant Niwas' Building, Katrak Road, Wadala F/North Ward, Mumbai-400 031. The present suit premises is situated at Shop. No.7, Ground Floor, A. P. Shetye Chawl, B. J. Deorukhkar Road, Naigaon, Dadar (E), Mumbai - 400 014. It is admitted position that, the said Shop No.7 is on the main road and the same admeasures 180 sq.ft. Although, it is the contention of the Petitioner that, the suit premises is in the Chawl which is 100 years old, however, it is to be seen that, as far as the commercial premises on main road, there is no difference between premises in new building and premises in old building. In fact, what is important is that, the shop premises is in prime location.

4. The learned Appellate Court is not right in observing that, the suit premises is newly constructed. Learned counsel appearing for the Petitioner is right in pointing out that, suit premises is in old Chawl. However, the agreement on which the Respondents have relied is at Wadala and in fact, the suit premises is in a better locality at Naigaon, Dadar (East) which is more advantageous for conducting the commercial

business.

5. It is the contention of the Respondents that, presently the suit premises is occupied by Mr. Pramod Shivaji Patil who is conducting the business in the name of M/s. Aaradhya Developers. However, even if, the said aspect is ignored, the suit premises is in busy commercial locality. Therefore, no interference is required by this Court under Article 227 of the Constitution of India.

6. However, time to deposit the amount of arrears is extended by two months i.e. till 20th March 2023. The Petitioner shall deposit the amount for the period of January 2023 and February 2023 on or before 10th March 2023 and thereafter, for the further period, continue to pay as per the order of the Appellate Court.

7. The Writ Petition is dismissed in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)

Note : This order is corrected by speaking to the minutes of order dated 9th February, 2023.