

KANCHAN VINOD MAYEKAR
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 225 OF 2023

Jayashree Raju Alhat

..... Petitioner

VERSUS

Ramesh @ Ramakant Ramchandra Tarade

..... Respondent

Mr. Mohansingh Rajput for the Petitioner.

Mr.Sagar Bhirange for the Respondent.

CORAM: RAJESH S. PATIL, J.

DATE : 16th OCTOBER, 2023

P.C:-

This writ petition is filed under Article 227 of the Constitution of India, thereby challenging the judgment and order dated 16th July, 2022 passed by the District Judge, Pune on order below Ex.5, in Civil Appeal No. 160 of 2019.

2. The petitioner herein is a tenant, who has suffered a decree of eviction under section 16(1)(g) of the Maharashtra Rent Control Act.

3. The petitioner thereafter filed an appeal being Civil Appeal No. 160 of 2019, before the District Judge, Pune, thereby challenging the

eviction decree passed by the Small Causes Court, Pune. In the civil appeal, the petitioner filed an application Ex.5, seeking stay to the impugned judgment and order passed by the Court of Small Causes.

4. By its order dated 16th July, 2022, the District Judge, Pune while granting stay to the effect and operation of the decree passed by the Small Causes Court, fixed the payment of compensation at the rate of Rs.5,000/- per month from the date of the decree till the decision of the appeal.

5. I have heard both sides, however the advocate for the respondent could not satisfy me that the amount fixed at the rate of Rs.5,000/- per month by the District Judge, has been arrived after taking into consideration, the ratio laid down by the Supreme Court in the judgment of the Hon'ble Supreme Court in case of ***Atmaram Properties vs. Fedral Motors, 2005 SCC (1) 705*** and in case of ***State of Maharashtra vs. Supermax, 2009 (9) SCC 772***.

6. The District Court should have fixed the monthly compensation based on certain evidence produced before it. It appears that no such

evidence is produced in the form of ready reckoner or any other leave and licence agreement of premises in the nearby locality. Therefore, according to me a case is made out to set aside the impugned order dated 16th July, 2022 passed on order below Ex.5.

7. The order below Ex.5 passed on 16th July, 2022 passed by the District Judge, Pune is hereby quashed and set aside.

8. The District Judge will hear the parties after granting them opportunity to produce the documents, for fixing the monthly compensation of the suit premises based on the ratio laid down by the Hon'ble Supreme Court in case of *Atmaram Properties (supra)* and in case of *State of Maharashtra vs. Supermax (supra)*.

9. In the meanwhile, there will be stay to the execution of the impugned judgment and decree dated 31st December, 2018, passed in Civil Suit No. 129 of 2016.

10. Writ petition is accordingly disposed of as allowed.

[RAJESH S. PATIL, J.]