



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3431 OF 2019
IN
CIVIL REVISION APPLICATION NO.137 OF 2020

Shri. Laxman Waman Patil ... Applicant.
Versus
M/s.Indian Asbestos Cement Products and Ors. ... Respondents.

Mr. Kailas Dewal i/by Mr.Yash Dewal, Mr.Sham Thakur, Advocates for
the Applicants.
Mr. R.D.Suryawanshi, Advocate for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : DECEMBER 19, 2023.

P. C.:

1. Interim Application has been preferred by the landlord-decree holder seeking a direction to the Respondent to pay compensation to the Applicant equivalent to the market rent in respect of the suit property.
2. The application has been preferred in view of the enunciation of the law in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.* reported in *(2005) 1 SCC 705*. The Apex Court held that the Appellate Court while exercising the jurisdiction under Order 41 Rule 5 has the power to put the appellant-tenant on terms while

granting stay of decree of eviction. In the case of ***State of Maharashtra and Anr. Vs Super Max International (P) Ltd. and Ors.*** reported in ***(2009) 9 SCC 772***, the Apex Court held that the interim compensation to be fixed should not be fanciful or exorbitant. Applying the guidelines of the Apex Court to the facts of the present case, the valuation report tendered by the parties will have to be considered.

3. The description and the area of the property is not in dispute. The property is a plot of land admeasuring about 2090 sq.mtrs. The property is approachable from Miragaon Public Road of 30 MW and it is located at a distance of approximately 1 k.m. from Junction of Western Highway. The valuation report of the Applicant dated 9th November, 2019 indicates that this site has all the facilities in the nearby vicinity and is accessible by the public transport. The valuer has adopted the method of return on fair market value of the land as per the ready recknor rate of 2019-2020 and has calculated the monthly interim compensation @ 5% of the fair market value of the land. As per the ready recknor rate, the rate is Rs.27,320/-per sq.mtrs. Although the valuer has enhanced the rate of land by 15% for its excellent location, I am not inclined to consider the same.

4. In addition the valuer has considered the area of plot at 2090 sq.mtrs. and the admitted position is that the 966 sq.mtrs. has been handed over for the 30MW road and as such, the balance area which is available with the Applicant is about 1124 sq.mtrs. This position is not disputed. The applicant's valuer has considered the area of the property as 2,090 sq.mtrs. whereas after deduction of the area handed over to MBMC, the area left is 1124 sq.mtrs. Considering the Ready Recknor Rate of Rs.27,320/- per sq.mtrs. The value of the land is Rs.3,07,07,680/- and considering return @5% the monthly compensation will be Rs.1,27,948.66/-.

5. The respondent's valuation report annexed at page 127 of the Application indicates that the stage of construction has been 100% completed. The valuer has taken the government approved rate of Rs.2538/- per sq.ft. for non-agricultural plot area and the plot area as 11,744 sq.ft. However, the valuer has considered the rate of Rs.3/- to Rs.5/- per sq.feet and has adopted the rate of Rs.3/- per sq.feet, as the plot is not developed and the locality is not demandable and have arrived at expected rental compensation of Rs.35,232/- p.m. The valuation report does not indicate the basis on which rate of Rs.3/- to 5/- per sq.ft. has been adopted by the valuer.

The valuation report takes into consideration ready reckon rate which according to the respondent's valuer is at 2,538/- per sq.ft. Even going by the valuation of the respondent's valuation the same comes to Rs.1,24,192.80 per month by taking into consideration the rate of return of 5%/-.

6. The submissions of Mr. Suryawanshi, learned counsel appearing for the respondent is that while granting the stay, no liberty was granted to the Applicant-landlord to file an application for interim compensation. In support he draws attention of this Court to the judgment in the case of *Super Max International (P) Ltd. and Ors.* (supra), and in particular paragraph 77, wherein, it has been held that it is open for the Revisional Court to stay the execution of the order including the direction to pay monthly rent at a rate higher than the contractual rate.

7. In my opinion, reading of the paragraph 77 of the decision in the case of *Super Max International (P) Ltd. and Ors.* (supra), does not place any embargo on the power of the Appellate Court to consider the subsequent application seeking payment of interim compensation especially when there is decree of eviction and the landlord is expected to be compensated for the delay caused during

the adjudication of the Appellate proceedings in event the decree of eviction is confirmed by the Appellate Court. This was the principle of law laid down in *Atma Ram Properties (P) Ltd.* (supra). This cannot be construed to refer to only the date when order of stay is granted and the application cannot be moved subsequently.

8. Another submission raised by Mr.Suryawanshi is that by order dated 23rd February, 2021 passed by this Court, the respondent was permitted to deposit a sum of Rs.35,232/-p.m. and it is only in event the respondent fails to deposit the amount. The Court will consider the application on its own merits. Learned counsel appearing for the applicant submits that this amount of Rs.35,232/-p.m. was in the nature of an ad-hoc compensation. In my view, considering that the order of 23rd February, 2021 did not dispose of the interim application and kept the same pending the monthly compensation of Rs.35,232/- was by way of ad-hoc compensation.

9. As indicated above, both the valuers have adopted the method of return of investment on fair market value of the property based on the ready recknor rate. The Apex Court in the case of *Supermax International Pvt.Ltd. & Ors.* (supra), has held that the reasonableness of the interim compensation passed on the stamp

duty ready recknor rate cannot be doubted. Considering that after applying the correct parameters the valuation by the applicant will be Rs.1,27,948.66 paise and the respondent's valuation will be Rs.1,24,192.80 paise the interim compensation can be fixed at Rs.1,25,000/- p.m.

10. Learned counsel appearing for the respondent submits that judgment and decree dated 24th March, 2009 passed by the Appellate Court was set aside by this Court in Civil Revision Application on 04th March 2019 and the Civil Appeal was restored to the file of Appellate court for deciding afresh. He would further submit that by judgment dated 3rd July, 2019, the suit was decreed on the grounds of non-user of the suit premises.

11. *Per contra*, learned counsel appearing for the Applicant would submit that even if the judgment and decree was set aside, the Appellate Court has upheld the decree of eviction on the ground of non-user and as such, the first order of eviction which is 24th March, 2009 is to be considered as a relevant date of termination of tenancy. In my opinion, as the judgment and decree of 2009 was set aside in the appeal and the civil appeal was thereafter restored and it is in the appellate proceeding that by judgment dated 3rd July, 2019 the

decree of eviction on the ground of non-user was confirmed, the relevant date for the purpose of considering the termination of tenancy is 3rd July, 2019.

12. In view of the above, the following order is passed.

ORDER

- (i) Respondent is directed to deposit the interim compensation @ Rs.1,25,000/- per month with effect from date of the judgment dated **3rd July, 2019;**
- (ii) The ad-hoc compensation deposited by the Respondent to be adjusted against the arrears;
- (iii) The arrears, if any, to be deposited within a period of three months from date of the order. **If the arrears are not deposited within the said period of three months, liberty to the applicant to apply for vacating the interim relief.**
- (iv) For the succeeding months, the Applicant to deposit the interim compensation on or before the 15th of each month and in case of two defaults, the applicant is at liberty to apply for vacating the interim relief.

13. Learned counsel appearing for the applicant submits that although the interim application seeks a direction to pay the interim compensation to the applicant and as such, liberty be granted for filing of an application for withdrawal. It is open for the applicant to make an application for withdrawal of the amount if so permissible in law.

14. Interim Application stands disposed of.

(Sharmila U. Deshmukh, J.)

(This order is corrected pursuant to the Speaking to the Minutes order dated 3rd January, 2024.)