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IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL APPLICATION NO.85/2023
IN
SECOND APPEAL NO.50/2023**

**BALKRISHNA CHANDRAKANT
WARTEKAR AND ANR. ... APPLICANTS**

Versus

**ANA FRANCIS J. D COSTA
AND 3 ORS. ... RESPONDENTS**

Ms A. Fernandes, Advocate for the Applicants.
Mr P. Talaulikar, Advocate for Respondents No.1 and 2.

CORAM: M. S. SONAK, J.

DATED: 18th JANUARY 2024

P.C.:

1. Heard Ms A. Fernandes for the applicant and Mr P. Talaulikar for respondents no.1 and 2.
2. The accompanying Second Appeal is already admitted. By order dated 07.09.2023 ad interim relief was granted restraining eviction of the appellants subject to they depositing ₹15,000/- per month towards ad hoc compensation effective from 01.08.2023. The record shows that deposits have been made. On one occasion,

this deposit was made beyond time i.e. 15.01.2024 when it had to be made on 05.01.2024. A precipe is moved seeking condonation. This precipe can be allowed and is hereby allowed.

3. Compensation of ₹15,000/- was determined on an ad hoc basis at the stage when respondents no.1 and 2 had not filed their response or produced material that would have assisted the Court in determining compensation that the appellants could be directed to deposit as a pre-condition for interim relief. All this exercise was undertaken in terms of the decisions of the Hon'ble Supreme Court in *Atmaram Properties (P) Ltd. v/s. Federal Motors (P) Ltd. - (2005) 1 SCC 705* and *State of Maharashtra and Anr. v/s. Super Max International Private Limited and Ors. - (2009) 9 SCC 772*.

4. Now respondents no.1 and 2 have filed their response. Along with the response they have produced a valuation report of an expert. In terms of this report the plot which is now retained by the appellants would have fetched monthly rent of around ₹21,000/-. Based on this report Mr Talaulikar submits that the compensation amount should be enhanced to ₹21,000/-. He submits that compensation should be directed to be paid from the date of the Trial Court decree and not just the Appellate Court decree. Ms A. Fernandes states that no deposit was insisted before the First Appellate Court. She therefore submits that it would be harsh and inequitable to require deposits from the date of decree of the Trial Court. Her submissions, in the peculiar facts of the present case, deserves acceptance.

5. As regards compensation amount, the valuation report indeed refers to a monthly rent of ₹21,800/-. However, the sale instances referred to therein considered some residential plot in the heart of the city. Since the plot in question admittedly is not in the heart of the city, the compensation shall be determined at ₹17,500/- per month and not ₹21,000/- per month.

6. Accordingly, the ad interim order granted on 07.09.2023 is hereby confirmed with the modification that the appellants shall deposit in this court a sum of ₹17,500/- per month towards compensation. This amount shall be deposited from 05.02.2024. The amount of ₹15,000/- per month deposited from 01.08.2022 till 15.01.2024 is to be invested in case the same is not already invested. Even the amount that the appellants shall pay in future should be invested in a Nationalized bank. The other conditions set out in the order dated 07.09.2023 shall continue to apply.

7. Civil Application No.85/2023 is now disposed of in above terms. There shall be no order for costs.

M. S. SONAK, J.

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