

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1987 OF 2024

M/s. National Co-operative Consumers

Federation of India Ltd.

}*Petitioner*

: *Versus* :

M/s. Saidpur Jute Co. Ltd.

}....*Respondent*

Mr. Gauraj Shah *a/w. Mr. Pranav Chavan i/by. Mahesh Menon & Co. for the Petitioner.*

Mr. Anirudh Hariani *a/w. Mr. Vikrant Shetty a/w. Mr. Kush Shah i/by. Dhruve Liladhar & Co. for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 10 July 2024.

P.C. :

1) The challenge in the present petition is to the order dated 18 December 2023 passed by the Appellate Bench of the Small Causes Court fixing interim compensation of Rs.8,00,000/- per month and directing the Petitioner to pay the same from the date of termination till the decision of the Appeal.

2) I have heard Mr. Shah, the learned counsel appearing for the Petitioner and Mr. Hariani, learned counsel for the Respondent.

3) Perusal of the decree dated 30 March 2023 passed by the Small Causes Court would indicate that in addition to directing the Petitioner-Defendant to handover possession of the suit premises, an enquiry into *mesne profits*, is directed to be conducted from the date of the suit till delivery of possession under Order 20 Rule 12 of the Code. Thus, the Trial Court itself has not directed conduct of enquiry into *mesne profits* from the date of termination of tenancy i.e. 8 April 2008 but has directed the same to be conducted from the date of filing of the suit i.e. 7 February 2012. Despite this, the Appellate Bench has directed deposit of interim compensation from the date of termination of tenancy (8 April 2008). This is an obvious error on the part of the Appellate Bench.

4) Another error to be found in the order passed by the Appellate Bench is to direct deposit of interim compensation in respect of the period prior to the decree dated 30 March 2023. In **Atma Ram Properties (P) Ltd. V/s. Federal Motors Private Limited**¹ the Apex Court has held that as a condition for grant of stay under Order 41 Rule 5 of the Code, the Appellate Court has jurisdiction to reasonably compensate the decreeholder for loss occasioned by delay in execution of the decree by grant of stay order. Thus interim compensation to be deposited as a precondition for grant of stay is towards compensation for delay in execution of the decree. In that view of the matter, the interim compensation will have to be deposited from the date of the decree and not in respect of the period prior to passing of the decree. In that case, the direction of the Appellate Bench to deposit interim

¹ (2005) 1 SCC 705

compensation in respect of the period from 31 March 2023 is again erroneous.

5) Coming to the quantum of interim compensation fixed by the Appellate Bench, it is seen that none of the parties relied upon any valuation reports. Respondent relied upon only one Leave and License Agreement dated 13 January 2020, that too in respect of premises admeasuring 31 sq.ft carpet area on the building '*Lodha Excelus*'. In my view, the Appellate Bench has rightly rejected the said instance. In absence of any guideline available before it, the Appellate Bench has fixed the interim compensation of Rs.8,00,000/- per month on the basis of guesswork.

6) The premises admeasure 4500 sq.ft and are apparently located inside mill land abutting N.M. Joshi Marg in Lower Parel. If the interim compensation of Rs.8,00,000/- is taken into consideration in respect of the premises admeasuring 4500 sq.ft, the same translates into Rs.177/- per sq.ft. Though it cannot be stated that the compensation so fixed by the Appellate Bench is excessive so as to warrant interference of this Court in exercise of writ jurisdiction, in my view, ends of justice would meet if the interim compensation is fixed at the rate of Rs.150/- per sq.ft considering the nature of premises that are in possession of the Petitioner. Slight reduction in the amount of interim compensation is being ordered considering the position that the premises are located inside the old mill structure, as well as the nature of activities undertaken by the Petitioner herein. Accordingly, the quantum of interim compensation is reduced from Rs.8,00,000/- to Rs.6,75,000/- per month.

- 7) I accordingly proceed to pass the following order :
- (i) The order dated 18 December 2023 passed by the Appellate Bench is modified to the following extent :
- (a) The interim compensation as a condition for grant of stay to the operation of the impugned judgment and decree dated 30 March 2023 payable by Petitioner during pendency of the Appeal is fixed at Rs.6,75,000/- per month.
- (b) The interim compensation of Rs.6,75,000/- per month shall be paid by the Petitioner/Appellant in respect of period from 30 March 2023 till the decision of the Appeal.
- (c) Since the Petitioner-Appellant is paying/depositing Rs.1,73,479/- in the Small Causes Court in R.A.D. Suit No. 692/2011, the said amount of Rs.1,73,479/- shall be deducted from the interim compensation of Rs.6,75,000/-. In other words, the Petitioner-Appellant shall be liable to deposit interim compensation of Rs.5,01,521/- during pendency of Appeal No. 125 of 2023.
- (d) The arrears of interim compensation fixed above shall be deposited by the Petitioner-Appellant within a period of 3 months from today.
- (e) Clauses-3, 4 and 5 of the Appellate Bench's order dated 18 December 2023 shall remain undisturbed.
- 8) With the above directions, the Writ Petition is **disposed of**.

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[SANDEEP V. MARNE, J.]