

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.2602 OF 2024**

Bombay Assemblies of God Day
School represented by its authorized
representative Mrs. Dr. Annie
Thomas

....Petitioner

V/s.

Aisha Shivaji Udeshi

....Respondent

WITH

WRIT PETITION NO.2607 OF 2024

Bombay Assemblies of God Day
School represented by its authorized
representative Mrs. Dr. Annie
Thomas

....Petitioner

V/s.

Aisha Shivaji Udeshi

....Respondent

Mr. Mandar Soman *with Mr. Saurabh S. Godbole i/b. Mr. Sahil Mahajan for the Petitioner.*

Mr. Pradeep Thorat *i/b. Mr. Lalit Jain for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 25 June 2024.

P.C. :

1) The challenge in the present petitions is to the orders dated 3 January 2024 passed by the Appellate Bench of the Court of Small Causes at Mumbai by which conditional stay has been granted to the decree of eviction dated 2

May 2023 on payment of monthly compensation of Rs.1,62,000/- and Rs. 10,000/- by the Petitioner from the date of the decree during pendency of the appeal.

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

3) It is seen that the area in possession of the Petitioner in Writ Petition No.2607 of 2024 is 3700 sq.ft. and in Writ Petition No.2602 of 2024 is 770 sq.ft. in the basement of the building situated in Chembur at Mumbai. In respect of premises admeasuring 3700 sq.ft., the Appellate Bench has fixed the interim compensation of Rs.1,62,000/- whereas in respect of basement premises of 770 sq.ft. the Appellate Bench has fixed interim compensation @ Rs.10,000/- per month.

4) Mr. Soman had objected to the quantum of interim compensation essentially on the ground that the object for which the premises are being used ought to have been taken into consideration. According to him, Petitioner is running a school for underprivileged children in the suit premises. That the school charges meager amount of Rs. 900 or 1500 per student towards tuition fees. That the location of the school is in slum area. That Petitioner is not a profit-making organisation. That therefore, the Appellate Bench ought to have struck a balance between social cause for which the school is being run by Petitioner and the commercial interest of the Respondent-landlord. He would further submit that the facts of the case are such that balance need to be struck to achieve equity. He would further submit that in any case, the Trial Court has already directed enquiry into the

mesne profit and that in the event of Petitioner failing in the Suit, it would be liable to pay mesne profit. That the amount of monthly compensation cannot be so high so as to render the remedy of appeal for the Petitioner nugatory. In support of his contention, Mr. Soman relied upon judgment of this Court in *Chandaben Jayantilal Udani (since deceased) through legal heirs vs. Hansa Villa Realty Pvt. Ltd. and Ors.*¹ and *Deepak S. Chavan vs. Shantaben V. Shah.*² To demonstrate the bonafides, he would submit that Petitioner is not intending to occupy the premises without paying anything. That Petitioner can, at the highest, bear the burden of Rs. 45,000 and Rs. 5000 towards interim compensation.

5) *Per contra* Mr. Thorat oppose the petitions and support the orders passed by the Appellate Bench. He would dispute the claim of Mr. Soman that the school is being run for underprivileged children. He would submit that information available of the Petitioner-school on the internet indicates that fees of Rs.30,000/- is being charged from the students. He would submit that the school is situated in upmarket location in Swastik Park, Chembur. Though the rent payable in respect of the premises in occupation of Petitioner was much higher, the Appellate Bench determined reasonable compensation of Rs.1,62,000/- and Rs.10,000/- considering the fact that Petitioner is running school in the premises.

6) I have considered the submissions canvassed by the learned counsel appearing for the rival parties.

7) Petitioner is mainly aggrieved by the quantum of interim compensation of Rs.1,62,000/- and Rs.10,000/- in respect of the suit

¹. 2019(2)Mh.L.J.

². 2016 SCC OnLine Bom 5124

premises by citing the alleged impossibility to bear the burden of paying such high amount during pendency of the appeal. The Petitioner has shown willingness to pay monthly compensation of Rs.45,000/- and Rs.5,000/- in respect of both the premises.

8) The premises in occupation of the Petitioner admeasure 3,700 sq.ft. on ground and second floor and 770 sq.ft. in the basement. Monthly compensation of Rs.1,62,000/- is fixed in respect of ground and second floor whereas compensation of Rs.10,000/- is fixed in respect of basement premises of 770 sq.ft. Though the Petitioner might be running school in the suit premises as per the law laid down by the Apex Court in ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd. 2005 1 SCC 705*** and ***State of Maharashtra vs. Super Max International Pvt. Ltd. (2009) 9 SCC 772***, reasonable amount of compensation is required to be determined with a view to ensure that the tenant does not continue in possession of premises during pendency of litigation to the detriment of landlord. In my view a balance needs to be struck between the commercial potential of the premises and the use at which the premises are put by the tenant. Petitioner running the school in the suit premises cannot be a solitary consideration for determining amount of monthly compensation. It appears that the valuation report placed on record by the Respondent-landlord has indicated that a residential unit in the locality fetches rent of Rs.42,000/- for an area of 700 sq.ft. Going by that instance, rent in respect of 3700 sq.ft would be to the tune of Rs.3,00,000/-. Despite this, the Appellate Bench has fixed the compensation at Rs.1,62,000/- per month considering the fact that Petitioner is a school and non-profit making organisation. For basement admeasuring 770 sq ft, interim compensation of Rs. 10,000/- can, by no stretch of imagination, be

termed as unreasonable or excessive. In my view the amount of compensation fixed by the Appellate Bench appears to be reasonable and not too excessive, so as to warrant interference of this Court in exercise of writ jurisdiction. The Appellate Bench has given due consideration to the factum of Petitioner running school in the premises.

9) Considering the amount of compensation fixed by the Court, I am unable to hold that the quantum is such that the Petitioner is prevented from exercising remedy of appeal. Therefore, reliance of Mr. Soman on judgment of this Court in ***Chandaben Udani*** (supra) and ***Deepak Chavan*** (supra) does not assist the case of the Petitioner. Merely because enquiry into mesne profit is directed by the Trial Court, the same cannot be a ground for Petitioner-tenant to enjoy possession of the premises without paying reasonable compensation.

10) After considering the overall conspectus of the case, I am not inclined to interfere in the impugned orders passed by the Appellate Bench of the Court of Small Causes, Mumbai. Writ Petitions are devoid of merits and are accordingly dismissed.

[SANDEEP V. MARNE, J.]