

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

WRIT PETITION NO.5987 OF 2024

Nasiruddin Bashiruddin Mattikop

...Petitioner

Versus

The Mohammedan Education
Society, Kolhapur through
Administrator Kadar Hamaja Malbari.

...Respondent

...

Mr. Sandeep Koregave *with Ms Pallavi Karanjkar for the Petitioner.*
Mr. Pawan Tiwari *i/b. Mr. Shantanu Kalekar for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATED : 11 JUNE 2024.

PC:

1. Challenge in the present petition is to the order dated 20 December 2023 passed by the learned District Judge, Kolhapur directing Petitioner-Appellant to pay Rs.13,534/- per month towards interim compensation in respect of the suit premises during pendency of the appeal.

2. Respondent-landlord instituted Regular Civil Suit No.2095 of 2012 in the Court of Jt. Civil Judge, Junior Division, Kolhapur seeking recovery of possession of suit shop from Petitioner. Suit came to be

partly decreed by judgment and order dated 23 November 2019 and Petitioner- Defendant has been directed to vacate the suit shop.

3. Petitioner -Defendant has preferred Regular Civil Appeal No.2 of 2020 before the District Judge, Kolhapur, challenging the decree of the Trial Court. In the pending appeal, he filed application seeking stay of the decree. The Appellate Court, by order dated 18 May 2023, stayed the decree till disposal of the appeal on the condition of Petitioner paying Rs.10,000/- per month towards compensation to Respondent in addition to the standard rent from the date of the order till disposal of the appeal.

4. The Petitioner challenged order dated 18 May 2023 in this Court by filing Writ Petition No.8925 of 2023, which came to be disposed of on 26 September 2023 by consent of both the parties and the application at Exhibit 27 was remanded to District Court, Kolhapur for being decided afresh. By impugned order dated 20 December 2023, District Judge, Kolhapur has decided the application at Exhibit-27 afresh and has determined the interim compensation in respect of the suit premises @ Rs.13,534/- per month to be paid to the Respondent. Petitioner is aggrieved by determination of the interim compensation at Rs.13,534/- and has filed the present petition.

5. Heard Mr. Koregave, the learned counsel appearing for the Petitioner. He would submit that amount of interim compensation fixed

by the Appellate Court is excessive considering the fact that the suit premises are part of the 40 year old structure consisting of tin shade. That there are no amenities or sanitation facilities attached to the suit premises. That the suit premises are located near a crematorium and that no other person will operate from the suit premises on account of its unique location. He would rely upon Valuer's report prepared at the behest of Petitioner, as per which, the market rent payable in respect of the suit premises is Rs.5274/- per month. He would submit that valuation report is prepared after taking into consideration both the ready reckoner rate as well as market rate. He would submit that without prejudice to the rights and contentions, the Petitioner is willing to deposit interim compensation of Rs.5274/- per month till disposal of the appeal.

6. *Per contra*, Mr. Pawan Tiwari, the learned counsel appearing for Respondent would submit that amount of interim compensation is fixed by the Appellate Court is just and proper and that the same does not warrant any interference at the hands of this Court. That Petitioner has indulged in blatant unauthorized construction wherein he has constructed an additional sub floor within the suit premises. That Petitioner is a medical professional and carries on his professional activities in the suit premises and is earning substantial fees out of his practice. That the suit premises are located in the center of Kolhapur city. That the Appellate Court has rightly determined the amount of interim compensation by relying on the basis of valuation report

submitted at the behest of the Respondent. He would pray for dismissal of the petition.

7. I have considered the submissions canvassed by the learned counsel appearing for the parties.

8. It appears that initially the District Court had determined the amount of interim compensation @ Rs.10,000/- per month in addition to standard rent by order dated 18 May 2023. The Petitioner got aggrieved by determination of the interim compensation @ Rs.10,000/- plus standard rent and filed Writ Petition No.8925 of 2023 in this Court. The Writ Petition was disposed of by consent of the parties and the District Court was directed by this Court vide order dated 26 September 2023 to decide the issue by this Court by order dated 26 September 2023. The order of remand, it appears has worked out to disadvantage of Petitioner since the amount of interim compensation is further increased to Rs.13,534/-.

9. Perusal of the order passed by the District Judge would indicate that it has essentially accepted the valuation report submitted at the behest of the Respondent. On the contrary, the valuation report submitted at the behest of the Petitioner indicates that the market rent payable in respect of the suit premises is Rs.5274/-.

10. I have gone through both the valuation reports. There appears to be one big difference in both the reports, which is about the exact area of the suit premises. The valuation at the behest of the Petitioner (*Gorule Architects*) appears to have been done by treating area of suit premises as 156 sq.ft. built up area, whereas the valuation of the Respondent (*Vhanbatte Consultants*) has treated the area of 156 sq.ft. as carpet area and the additional 20% area is added to arrive at built-up area. The valuation is thus done by assuming that the built-up area of the shop is 187 sq.ft. Perusal of the plaint indicates that suit premises are described as 10x15=150 sq.ft. In my view, there is nothing to indicate that built up area of suit premises is 187 sq.ft, which is the basis for valuation report of Vhanbatte Consultants. At the same time the valuation report prepared at the behest of the Petitioner-Gorule Architects can also not be accepted as the value of the suit shop is treated as Rs.7,91,000/- by the said valuer. It is difficult to imagine that in Kolhapur city shop admeasuring 156 sq.ft. can be purchased for a paltry sum of Rs.7,91,000/-. Mr. Koregave has made strenuous efforts to indicate lack of amenities and sanitation facilities as well as location of the suit shop near *kabristan*. While the said fact could be relevant for the purpose of valuation, it is difficult to believe the value of the suit shop can be as little as Rs.7,91,000/-. Monthly rent of Rs.5274/- is arrived at by Gorule Architects by assuming the market value of the suit shop at Rs.7,91,000/-.

11. The District Court appears to have completely accepted the valuation presented by the Respondent which determined the market value of the suit shop at Rs. 20,30,100/-. However, the said valuation is on assumption that the built-up area of the suit shop is 187 sq.ft. In my view considering both the valuation reports, it would be appropriate to fix the amount of interim compensation at Rs.10,000/- per month in respect of the suit shop.

12 After having determined the amount of interim compensation it is seen that the District Judge has directed payment of interim compensation from the date of order i.e. 20 December 2023 till disposal of the appeal. As held by the Apex Court in ***M/s. Atma Ram Properties (P) Ltd Vs. M/S. Federal Motors Pvt. Ltd 2005 1 SCC 705*** the interim compensation will have to be paid from the date of the decree, which in the present case is 23 November 2019. This is second round of litigation between the parties on the issue of payment of interim compensation. Therefore, in order to prevent any further litigation amongst the parties, while providing some solace to the Petitioner in the amount of interim compensation, it would be appropriate to direct payment of interim compensation from the date of decree.

13. I accordingly proceed to pass the following order:-

- (i) Order dated 20 December 2023 passed by the District Judge, Kolhapur is modified to the extent that the amount of interim compensation in respect of the suit premises is fixed at Rs.10,000/- per month, which shall be paid by Petitioner to Respondent from the date of decree i.e. 23 November 2019.
- (ii) The Petitioner shall pay to the Respondent the arrears of interim compensation from 23 November 2019 till 31 July 2024 and shall thereafter pay the interim compensation on or before 10th day of each succeeding month during pendency of the appeal.

14. With the above directions, the writ petition is disposed of.

[SANDEEP V. MARNE, J.]