

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

WRIT PETITION NO.8325 OF 2024

Latha Prabhakar Shetty & Ors.
V/S

...Petitioners

Farouk Merwan Irani & Anr.

...Respondents

Mr. Rahul Soman, Mr. Ayaz Bilawala, Ms. Shweta Dali i/b M/s. Bilawala & Co. *for the Petitioners.*

Mr. Girish Godbole, *Senior Advocate* with Mr. Prasad Nagargoje i/b Mr. Devashish Godbole *for Respondent No.1.*

Mr. P.S. Bankar i/b Mr. Santosh Singh *for Respondent No.2.*

CORAM: SANDEEP V. MARNE, J.
DATE : 11 JULY 2024.

P.C.:

1 By this Petition, Petitioners challenge to the order dated 18 April 2024 passed by Appellate Bench of the Small Causes Court fixing interim compensation of Rs.3,00,000/- per month payable by the Petitioners from the date of the decree till decision of Appeal.

2 It appears that Petitioners have suffered decree dated 6 December 2023 by which Petitioners are directed to handover possession of the suit premises to the Plaintiffs. Petitioners have filed Appeal No.25 of 2024 challenging the decree dated 6 December 2023. Considering the law laid down by the Apex Court in **M/s. Atma Ram Properties (P) Ltd vs M/s. Federal Motors Pvt.**

Ltd.¹ the Appellate Bench initially called valuation reports from both the sides by order dated 1 March 2024 and thereafter proceeded to determine interim compensation at the rate of Rs.3,00,000/- per month by the order dated 18 April 2024 which is the subject matter of challenge in the present Petition.

3 I have heard Mr. Soman, the learned counsel appearing for Petitioners, Mr. Godbole, the learned senior counsel appearing for Respondent No.1 and Mr. Bankar, the learned counsel appearing for Respondent No.2.

4 It appears that the suit premises are located on the road leading to Bandra-Worli Sea-link and almost at the junction of Dr. Annie Besant Road, in Worli, Mumbai. The suit premises ad-measure 1171 sq.ft. carpet area in addition to mezzanine floor admeasuring 520 sq.ft. Mr. Soman has fairly conceded the position that the valuer of the Petitioners has erroneously excluded mezzanine area in the valuation report. Even going by the valuation suggested by Petitioners' valuer, the return at the rate of 6% per annum on the market value of the suit premises would be roughly in the range of Rs.2,60,000/- if the mezzanine area is taken into consideration. On the other hand, Plaintiffs have relied upon of the instances in the near by locality where the license fees at the rate of Rs.566.67, 411.70 and 474.25 per sq. ft. is shown to be payable in respect of ground floor premises in Worli area. Going by the said rate of license fees, the interim compensation in respect of the suit premises would be higher than Rs.3,00,000/- fixed by the Appellate Bench. In my view there is not much gap between the valuation suggested by the

1 (2005) 1 SCC 705

Petitioners and the amount of interim compensation fixed by the Appellate Bench. On the contrary there appears to be a wide gap between the instances relied upon by the Plaintiffs and the interim compensation fixed by the Appellate Bench. Even going by the rate of Rs.411.70 per sq. ft. license payable in respect of the suit premises would be to the tune of Rs.6,00,000/-. The Appellate Bench has however fixed the amount of interim compensation at a reasonable rate of Rs.3,00,000/- per month. Considering the location of the suit premises, in my view, it cannot be stated that the amount of interim compensation is so excessive that this court should interfere in the same in exercise of jurisdiction under Article 227 of the Constitution of India.

5 Mr. Soman, has particularly highlighted the condition of the suit premises and has contended that it is improper to compare the rent payable in respect of other premises for the purpose of arrival at interim compensation payable in respect of the suit premises considering precarious condition thereof. He would submit that if Plaintiffs were to let out the suit premises to a third party in the same condition as they stand today, the suit premises will not be able to fetch license fees/rent of Rs.3,00,000/- per month. Relying on paragraph 19(1) of the judgment in *Atma Ram Properties (P) Ltd.* (supra), Mr. Soman has contended that the amount of interim compensation cannot exceed the loss that would be caused to the decree holder by delaying execution of the decree on account of grant of stay order. According to Mr. Soman, therefore what Plaintiffs could have earned by letting out the suit premises in the same condition as they stand today, would determine the amount of interim compensation in the present case. I have gone through the

photographs of the suit premises and it does appear that condition thereof is not very healthy. Mr. Soman has suggested that if Petitioners are permitted to carry out repairs in the suit premises, they are willing to deposit the interim compensation fixed by the Appellate Bench.

6 Considering the facts and circumstances of the present case, I am of the view that though the amount of interim compensation fixed by the Appellate Bench is not so oppressive so as to deny the remedy of Appeal to the Petitioners, considering the condition of the suit premises it would be appropriate to reduce the amount of interim compensation to Rs.2,75,000/- per month.

7 Accordingly, the order dated 18 April 2024 passed by the Appellate Bench shall stand modified only to the extent of reduction of amount of interim compensation from Rs.3,00,000/- per month to Rs.2,75,000/- per month. The rest of the order of the Appellate Bench shall remain undisturbed. The Petitioner shall pay the arrears of interim compensation of Rs.2,75,000/- per month from the date of the decree within a period of two months from today.

8 With the above directions, the Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

Digitally signed
by SUDARSHAN
RAJALINGAM
KATKAM
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