

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17473 OF 2024

Saiyad Anees Bano Zulfikarali

Wd/O Saiyed Zulfikarali and Ors

... Petitioners

Versus

Mohd Zahid Hussain Mansuri

S/O Mustafa Mansuri

... Respondent

Mr. Anand Pande *for the Petitioners.*

Mr. Mahesh N. Devlekar *for Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 2 DECEMBER 2024.

P.C. :

1) The Petition challenges Order dated 1 October 2024 passed by the Appellate Bench of the Small Causes Court fixing Rs.1,75,000/- per month to be the interim compensation which directed to be deposited by the Defendant-Tenant during pendency of Appeal, in which the eviction decree has been challenged.

2) I have heard Mr. Pande, the learned counsel appearing for Petitioners and Mr. Develekar, the learned counsel appearing for Respondent.

3) It appears that the Appellate Bench has determined the interim compensation at Rs.1,75,000/- by assuming the area of the suit premises as 2000 sq.ft. The learned counsel for the Plaintiffs would invite my attention to the copy of Deed of Conveyance dated 5 November 2015 by which the area bought by the Plaintiffs-landlords is indicated as 29.260 sq.mtrs., which is reflected as 20.90 sq.mtrs on the plan. He would further submit that the Conveyance Deed includes name of the Petitioner as tenant and the area in his occupation to be 224.884 sq.ft.

4) On the other hand, the learned counsel for the Respondent-Plaintiff would rely upon the assessment extract of municipal corporation to indicate that the Plaintiffs are paying municipal taxes in respect of area ad-measuring 95.32 sq.mtrs.

5) *Prima facie*, it appears that the assumption on the part of the Appellate Court that the Defendant-Tenant occupies area of 2000 sq.ft. for determining the quantum of interim compensation appears to be erroneous. In my view, therefore, the proceedings deserve to be remanded before the Appellate Bench of the Small Causes Court for redetermination of the amount of interim compensation by taking into consideration not just the area in respect of which Defendants are tenants but also the valuation report, which is now sought to be relied upon before this Court.

6) Accordingly, Order dated 1 October 2024 passed by the Appellate Bench of the Small Causes Court is set aside. The

Application at Exhibit-6 is remanded for re-determination of amount of interim compensation to be deposited during pendency of the Appeal in the light of observations made in the order. The Appellate Bench shall proceed to decide the application at Exhibit '6' as expeditiously as possible preferably within a period of three months. Till fresh decision of application at Exhibit-6, the eviction decree shall not be executed.

7) With the above directions, Writ Petition is partly **allowed and disposed of**. Needless to say that the application at Exhibit-6 shall be decided afresh by the Appellate Bench without being influenced by any of the observations made in the order.

[SANDEEP V. MARNE, J.]