

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18479 OF 2024

1. Snehalata Devi Ghorpade
(deleted as died)
2. Smt. Kanchanmala Dilipsingh
Ghorpade and Ors.

...Petitioners

V/s.

Needle Roller Bearing Co. Ltd. and
Ors.

...Respondents

Dr. Ranjit Thorat, *Senior Advocate with Mr. J.K. Shah, Ms Pooja Shah i/b. M/s. R.J. Law for the Petitioners.*

Ms. Asha Bhambwani *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATED : 12 December 2024.

P.C.:

1) Challenge in the present Petition is to the order dated 16 October 2024 passed by the Appellate Bench of the Small Causes Court stipulating the condition of deposit of interim compensation of Rs. 8,00,000/- per month as a pre-condition for granting stay to the execution of decree under Order XLI Rule 5 of the Code of Civil Procedure, 1908 (**the Code**). The Petitioners are essentially aggrieved by the quantum of interim compensation fixed by the Appellate Court.

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2) I have heard Dr. Thorat, the learned senior advocate appearing for the Petitioners/Defendants and Ms. Bhambwani, the learned counsel appearing for the Respondents/Plaintiffs.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that only Plaintiffs relied upon valuation report of M/s. Shrinivas M. Kini and Co. for determination of the quantum of interim compensation. Petitioners/Defendants in turn did not rely upon any valuation report. As per the valuation report of the Plaintiffs, the capital value of the suit premises admeasuring 3527 sq.ft. is indicated as 21,14,15,434/-. The Valuer thereafter applied return @ 6.25% and suggested the monthly return on the suit premises @ 11,01,122/-. The Appellate Court has however, fixed the interim compensation at Rs.8,00,000/- per month.

4) Dr. Thorat submits that the Petitioners have now secured valuation report of Mr. Sanjay E. Joshi, in which the actual value of the flat is indicated at Rs.13,80,22,091/- and accordingly the interim compensation at the highest be fixed at Rs.3,45,000/- per month. Dr. Thorat would submit that the building is 85 years old, having been constructed in the year 1940 and therefore Petitioners' Valuer has correctly adopted 70% depreciation while fixing the market value of the suit premises.

5) Perusal of the valuation report relied upon by Plaintiffs/Respondents would indicate that their Architect considered depreciation only on the construction cost and taken into consideration the ready reckoner rate of Rs.61,347/- per sq.ft. for the land without any depreciation. On the contrary, Petitioners/Defendants' Valuer applied the depreciation both on land as well as on cost of construction while determining the valuation. In my view, the land cost cannot be depreciated on the basis of age of the building. Therefore, the Valuer's report relied upon by Petitioners/Defendants is required to be discarded.

6) Going by the valuation report relied upon by the Plaintiffs, the actual value of the suit premises is indicated as Rs.21,14,15,434/-. The Suit Premises are located at plush location of Pedder Road in Mumbai and admeasure 3527 sq. ft. Most of the buildings on Pedder Road are 50 plus years old, despite their age, still command substantial higher capital value. The sprawling premises spread over 3500 sq. ft. at Pedder Road is bound to fetch price of Rs. 20 odd crores.

7) The only folly committed by Plaintiffs' Valuer is to apply the rental return of 6.25% on the said actual value of the flat. In my view, it is impossible in city of Mumbai to secure rental return of 6.25% for a residential property. Ordinarily, residential properties in Mumbai city fetch annual rental return ranging from 2.5% to 3% of capital value thereof. Therefore, the interim

compensation cannot be in excess of 3% rental return on the capital value.

8) Accordingly for ease of calculations, I proceed to consider the capital value of the Flat at Rs. 20 crores and by applying rental return @ 3% per annum, the monthly compensation in respect of the suit premises would be Rs.5,00,000/-.

9) Accordingly, order dated 16 October 2024 passed by the Appellate Bench of the Small Causes Court shall stand modified to the limited extent of reduction of quantum of interim compensation from Rs.8,00,000/- to Rs.5,00,000/-. Petitioners/ Defendants shall have time upto 31 March 2025 to clear arrears of interim compensation from 28 February 2024 to 31 March 2025. They shall thereafter continue to pay interim compensation @ of Rs.5,00,000/- per month on or before 10th day of each succeeding month. Subject to the deposit of interim compensation as directed by this Court, the execution of decree dated 28 February 2024 passed in R.A.E. Suit No.96/270 of 1987 shall remain suspended. Except the modification as indicated, rest of the order of the Appellate Bench shall remain unaltered.

10) With the above directions, the Writ Petition is partly allowed and disposed of.

[SANDEEP V. MARNE, J.]