

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

**WRIT PETITION NO.8498 OF 2024
WITH
INTERIM APPLICATION NO.9540 OF 2024
IN
WRIT PETITION NO.8498 OF 2024**

Abdul Haque Abdul Khalique Khan
Aged 63 years, having address at
Room No.12-B, 3rd floor,
Husaini Manzil, House No.99,
2nd Lane Kamathipura,
C.S. No.49, Byculla Division,
Mumbai – 400 008.

And

Currently residing address at
111 Juma Masjid Bldg. 3rd Floor,
Room No.48/49, Bellasis Road,
Mumbai Central, Mumbai – 08.

....Petitioner

V/S

Supreme India Construction
Having its office at 1301, Building No.3,
Navjivan Society, 8th Lamington Road,
Mumbai Central, Mumbai – 400 008.

....Respondent

Ms. Anita Castellino with Mr. Sayed Zia i/b Mr. Mehul Thakker *for the
Petitioner.*

Mr. Rakesh Agrawal *for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 14 JUNE 2024.
PRONOUNCED ON: 25 JUNE 2024.**

JUDGMENT:

1 **Rule.** Rule is made returnable forthwith. Heard finally with the consent of the learned counsel appearing for Petitioner and the learned counsel appearing for the Respondent.

2 Petitioner has filed this Petition challenging the judgment and order dated 4 May 2024 passed by Appellate Bench of Court of Small Causes at Mumbai in Execution Appeal No.37 of 2018. The Appellate Bench has allowed Execution Appeal and has set aside order dated 11 December 2017 passed by Small Causes Court in Execution Application No.517 of 2014 and has dismissed the said Execution Application. The Small Causes Court, by its judgment and order dated 11 December 2017, had held that the prayer of the Decree Holder for grant of compensation in execution proceedings is maintainable and had further directed that the Decree Holder (Petitioner) is entitled to get monthly compensation of Rs.1,42,500/- from Judgment Debtor for the period from 15 December 2011 till delivery of possession of the flat.

3 The issue that arises for consideration in the present Petition is about maintainability of execution proceedings filed by the Petitioner for recovery of monthly compensation on account of failure on the part of the Judgment Debtor (Respondent) to deliver possession of flat in pursuance of compromise terms entered into between Plaintiff and Defendant. Thus what needs to be decided is whether in execution proceedings, Consent Terms providing for Permanent Alternate Accommodation (**PAA**) as well as additional area in lieu of monthly compensation can be directed to be performed. If the answer to

the question is in the affirmative, the next issue is about the quantum of monthly compensation to be paid.

4 Briefly stated, facts of the case are that - Petitioner filed declaratory suit being RAD Suit No.1211 of 2009 against the Respondent seeking a declaration that he is the tenant in respect of the suit premises bearing Commercial Room No.12-B at Husaini Manzil, Building No.99, 2nd Lane Kamathipura, Mumbai – 400 008. During pendency of the suit, compromise took place between Plaintiff and Defendant (landlord) and Consent Terms were filed on 11 January 2010. Under the Consent Terms, it was agreed between the parties that Plaintiff is the tenant and Defendant is the landlord in respect of commercial premises bearing Shop No.12-B admeasuring 782 square feet carpet area on 3rd floor of the Building, Husaini Manzil, Building No.99, 2nd Lane Kamathipura, Mumbai – 400 008. It was recorded that the Defendant was redeveloping the said building and Plaintiff gave no objection for such redevelopment. It was further agreed in the Consent Terms that Defendant shall provide 782 square feet commercial carpet area on the second floor in the proposed Building to be constructed towards PAA in lieu of Plaintiff handing over vacant and peaceful possession of the suit premises to the Defendant for its demolition and redevelopment. It was further agreed that the Defendant shall provide additional commercial carpet area of 168 square feet to the Plaintiff in lieu of Plaintiff waiving of compensation and/or rent payable by the Defendant to the Plaintiff during construction of the proposed building. This is how total 950 square feet commercial carpet area was agreed to be provided to the Plaintiff towards PAA. The Consent Terms further noted that Plaintiff and Defendant executed Permanent Alternate

Accommodation Agreement (**PAAA**) dated 15 December 2009. A copy of the registered Agreement dated 15 December 2009 was appended to the Consent Terms. Plaintiff accordingly agreed to withdraw the suit. The Small Causes Court disposed of the suit in view of the Consent Terms.

5 As per PAAA, construction of the building was to be completed within a period of 24 months from issuance of commencement certificate with further grace period of six months, aggregating to 30 months. It appears that the commencement certificate was issued on 20 August 2010. However, since Plaintiff/Petitioner did not receive possession of PAA, notice dated 22 August 2012 was served on the Respondent demanding rent at the rate of Rs.1,25,000/- per month. The liability to pay rent was disputed by Respondent vide Advocate's letter dated 20 September 2012.

6 Petitioner filed Execution Application No.517 of 2014 before the Court of Small Causes at Mumbai seeking execution of the Consent Decree. Respondent questioned maintainability of the execution proceedings. The Small Causes Court passed order dated 7 March 2015 overruling Respondent's objection of limitation and directed parties to lead evidence on the issue of transit rent. Respondent filed Writ Petition No.8679 of 2015 before this Court challenging the order dated 7 March 2015. This Court dismissed the Petition of the Respondent by imposing costs of Rs.10,000/-. Parties thereafter led evidence. Respondent led evidence of Mr. Abdul Gani Maqsood Shah and Mr. Shaban Shah, who deposed that they were being paid rent of Rs.8,000/- per month from the year 2009. After considering the evidence on record the Small Causes Court passed order dated 11 December

2017 holding that the prayer of the Petitioner for grant of compensation in execution proceedings was maintainable. The Small Causes Court further directed Respondent to pay monthly compensation of Rs.1,42,500/- to the Petitioner from 15 December 2011 till delivery of possession alongwith interest at the rate of 18% per annum on the said amount.

7 Respondent challenged Small Causes Court's order dated 11 December 2017 before the Appellate Bench by filing Execution Appeal No.37 of 2018. Respondent also applied for stay of Small Causes Court's order. The Appellate Bench allowed the Interim Application filed by Respondent and stayed the order dated 11 December 2017 till final decision of the Appeal subject to Respondent depositing monthly compensation at the rate of Rs.71,250/- per month from 15 June 2012 either till disposal of the Appeal or till delivery of possession of alternate accommodation.

8 Petitioner filed Writ Petition No.113 of 2020 in this Court seeking withdrawal of deposited amount of rent. By order dated 28 August 2020 this Court permitted Petitioner to withdraw 60% of the deposited amount as per Minutes of Order submitted by both the sides. In pursuance of the said liberty, it appears that the Plaintiff has withdrawn an amount of Rs.39,98,550/-.

9 The Appellate Bench of the Small Causes Court took up Execution Appeal No.37 of 2018 for decision and by judgment and order dated 4 May 2024, has allowed the same. The Appellate Bench has set aside the order dated 11 December 2017 passed by the Small Causes Court and has dismissed

Execution Application No.517 of 2014. The amount deposited by Respondent alongwith interest is directed to be refunded to the Respondent.

10 Aggrieved by the judgment and order dated 4 May 2024 passed by the Appellate Bench, Petitioner has filed the present Petition.

11 Ms. Anita Castellino, the learned counsel appearing for the Petitioner would submit that the Appellate Bench of the Small Causes Court has grossly erred in setting aside the order passed by the Small Causes Court directing deposit of monthly compensation of Rs.1,42,500/-. She would submit that the suit filed by Plaintiff has been decreed in view of the Consent Terms filed by the parties. That the said decree is executable. That under the Consent Decree, Respondent has taken over various obligations and for ensuring fulfillment of those obligations, Petitioner is entitled to maintain execution proceedings. That under the Consent Decree, Respondent has agreed to handover flat admeasuring 950 square feet carpet area within 30 months of date of issuance of commencement certificate. That since PAA is not handed over within agreed time, Respondent is under obligation to pay monthly compensation to the Petitioner whose rented premises are demolished for redevelopment of the building. That though PAAA is executed between Petitioner and Respondent, the same is executed in their capacity as landlord and tenant. That if a separate suit was to be filed for fulfillment of obligations arising out of the said agreement, the same would obviously lie before Small Causes Court as the same is covered by provisions of Section 33 of the Maharashtra Rent Control Act, 1999. In support, she would rely upon judgment of this Court in *Tejbai Tejshe Dedhia and others vs. Central Bank of*

India and others, 2007 (5) Mh.LJ. 869, that therefore execution proceedings for fulfillment of obligations under Consent Decree are perfectly maintainable before Small Causes Court.

12 Ms. Castellino would further submit that Respondent has outrightly cheated Petitioner by dishousing him in respect of the tenanted premises for the last 15 years and has failed to handover possession of new flat in breach of obligations agreed in the Consent Terms. That acceptance of additional carpet area of 168 square feet by Petitioner in lieu of compensation does not mean that the right of Plaintiff to receive monthly compensation in respect of tenanted premises is waived off forever. At the highest, allotment of additional carpet area of 168 square feet could be treated as a set off for amount representing monthly compensation for 30 months, during which PAA was to be constructed and allotted to Petitioner. Ms. Castellino would therefore pray that the order passed by the Small Causes Court directing payment of monthly compensation at the rate of Rs.1,42,500/- be restored. She would submit that the said amount was fixed by the Small Causes Court after taking into consideration opinion of the valuer and that the said amount of Rs.1,42,500/- represents the true and correct market rent payable in respect of the tenanted premises.

13 *Per contra*, Mr. Agrawal, the learned counsel appearing for Respondent would oppose the Petition and support the order passed by Appellate Bench of Small Causes Court. He would submit that execution proceedings filed by the Petitioner are not maintainable. That the suit was filed merely for seeking declaration of tenancy of the Petitioner and that Consent Terms could have

been entered into only to the extent of the declaration sought in the suit. That the Consent Terms cannot be read over and above the declaratory relief sought for in the Plaint. He would submit that it is settled legal position that a declaratory decree merely declares the right of the decree holder qua judgment debtor and does not direct Judgment Debtor to do or refrain from doing any particular act or thing. In support he would rely upon judgments of the Apex Court in ***State of M.P. vs. Mangilal Sharma***, (1998) 2 SCC 510, Orissa High Court in ***Lingaraj Paikaray and others vs. Raghunath Chhotray and others***, AIR 1983 Ori. 146, Allahabad High Court in ***Rajendra Narain vs. Bajranji and others***, AIR 1983 ALL 364. He would also rely upon judgments of Punjab & Haryana High Court in ***Gurunam Singh vs. General Manager, Punjab Roadways***, Civil Revision No.2660 of 1993 decided on 9 April 2003, Allahabad High Court in ***Union of India vs. S.B. Singh***, AIR 1988 ALL 225 and ***Potti Venkata Kasi Vishwanadham vs. Vallabha Vyas***, AIR 1983 AP 64.

14 Mr. Agrawal would further submit that the compromise decree merely recognizes status of Plaintiff as tenant in respect of the suit premises. Though it refers grant of PAA, it does not provide for payment of any monthly compensation to the Plaintiff in any manner. That therefore execution proceedings cannot be used to grant something which is not specifically provided for in the Consent Decree. That the Consent Decree does not provide for consequences for delay in handing over possession of PAA. That therefore there is no question of execution of non-existent direction. That the suit is ultimately withdrawn and therefore there is nothing to be executed. That in any case, the Execution Application filed by the Plaintiff is in the nature of a fresh suit seeking specific performance of PAAA, which is

otherwise not maintainable before Small Causes Court. That the only remedy available for Petitioner is to file a substantive suit/arbitration proceeding for specific performance of PAAA. Mr. Agrawal would therefore pray for dismissal of the Petition. In the alternative, he would submit that in the event of this court interfering with the order of the Appellate Bench, the proceeding be remanded to the Appellate Bench for deciding the quantum of monthly compensation.

15 Rival contentions of parties now fall for my consideration.

16 Petitioner, who is Plaintiff in RAD Suit No.1211 of 2009 filed the said Suit seeking declaration that he is a tenant in respect of the suit premises. The said suit came to be compromised between the parties and following Consent Terms were entered between them and filed before the Small Causes Court:-

“1. It is agreed, declared, confirmed and recorded that the Defendants are landlords of commercial premises bearing Shop No.12-B admeasuring about 782 sq.ft of carpet area on 3rd floor of the building known as Hussaini Manzil Building No.99 situate at C.S. No.49 of Byculla Division, 2nd lane Kamathipura, Mumbai-400 008 (hereinafter referred to as "the suit premises") and the Plaintiff is tenant of the suit premises.

2. It is agreed, declared, confirmed and recorded that the Defendants are developing the various properties including said Hussaini Manzil situate at C.S. No.49 of Byculla Division and the Plaintiff has no objection thereof.

3. It is agreed, declared, confirmed and recorded that the Defendants shall provide an area of 782 sq.ft. (carpet area) commercial premises on 2nd floor with the height of 12-0" in the proposed building to be constructed on the C.S. No.49 of Byculla Division as and by way of Permanent Alternate Accommodation in lieu of Plaintiff's handing over vacant and peaceful possession of the suit premises to the Defendants for its demolition and redevelopment.

4. It is further agreed, declared, confirmed and recorded that the Defendants shall provide an additional area of 168 sq.ft. Commercial premises in lieu of

Plaintiff's waiving off compensation and/or rent payable by the Defendant to the Plaintiff for temporary arrangement during the period of construction of the proposed building. Thus, making a total area of 950 sq.ft. carpet area (including niche elevation treatment) the above area shall be exclusive of dry balcony and flower bed.

5. In the premises mentioned hereinabove, the Plaintiff and Defendants have accordingly executed the Permanent Alternate Accommodation Agreement dated 15th December, 2009 and registered the same under serial No.BBE/11049/2/2009 with the Sub-registrar of Assurance at Mumbai, a notarized copy of the said registered agreement is annexed hereto and marked as Exhibit-A.

6. It is agreed, declared, confirmed and recorded that save and except what has been mentioned hereinabove the Plaintiff and Defendants have no claim against each other and even otherwise all the allegations, contentions, submissions made and/or raised against each other in the proceedings of the aforesaid suit shall be treated as withdrawn.

7. In view of what has been recorded hereinabove and the order passed in these consent terms, the aforementioned suit shall stand disposed off."

17 Alongwith the Consent Terms, copy of the registered Agreement dated 15 December 2009 was also appended. The suit has been disposed of in view of the Consent Terms. Under the Consent Terms, Respondent not only recognized tenancy rights of the Petitioner in respect of the suit premises, but took from Petitioner his no objection for redevelopment of the building. Respondent agreed to provide PAA with commercial area of 782 square feet carpet in the newly constructed building. Since Petitioner was handing over possession of his premises for redevelopment, he was entitled to receive transit rent till construction of the new building. However, for the reasons best known to the parties, Petitioner agreed to accept additional commercial area of 168 square feet from the Respondent in lieu of transit rent so payable. Thus Petitioner decided to convert the total amount of transit rent receivable by him into additional constructed area of 168 square feet. Though the

Consent Terms do not refer the exact period during which new building is to be completed, the agreement appended to the Consent Terms indicates that Respondent undertook to construct the new building within 30 months from the date of issuance of commencement certificate. The commencement certificate came to be issued on 20 August 2010. Thus, there was obligation to handover PAA admeasuring 950 square feet commercial carpet area to the Petitioner within 30 months from 20 August 2010.

18 Though Mr. Agrawal has strenuously attempted to contend that the Consent Terms do not and cannot travel beyond the declaration sought in the suit, I am unable to agree with his submission. While compromising the suit, there is always give and take between the parties. Bare reading of the Consent Terms would indicate that Respondent agreed to recognize tenancy rights of the Petitioner on condition of Petitioner expressing agreement for redevelopment of the building. The agreement by the Petitioner to give consent for redevelopment of the building and to handover possession of suit premises to the Respondent was again premised on promise made by Respondent for grant of PAA admeasuring 782 square feet commercial carpet area and further area of 168 square feet in lieu of monthly transit rent (total commercial carpet area of 950 square feet). Thus, for recognizing tenancy rights of Petitioner, Respondent extracted agreement from Petitioner not only for redevelopment of the building but also to handover possession of the suit premises in lieu of grant of 950 square feet commercial carpet area in the new building. This was deal struck between the parties and recognized in the form of Consent Decree. It therefore cannot be contended that the Consent Decree is restricted to recognition of tenancy rights of the Petitioner. It extends much

beyond that and imposes obligation on the Respondent to grant PAA admeasuring 950 square feet commercial carpet area to the Petitioner. It therefore cannot be contended that the Consent Terms executed between the parties are incapable of being executed before the Small Causes Court.

19 In *Tejbai Tejshi Dedhia and others* (supra) the Division Bench of this Court encountered a somewhat similar situation. In that case, landlord filed a suit for eviction of tenant and an agreement came to be executed between landlord and tenant, under which tenant agreed to vacate the suit premises against promise to allot on rental basis equivalent area in the newly constructed building in place of old building. The issue before Division Bench was whether the said agreement between landlord and tenant could be specifically performed in a suit filed before Small Causes Court. This Court held in paragraphs 11, 12, 16 and 19 as under:

“11. The agreement apparently discloses admission on the part of both the parties thereto that they are landlords and tenant and the agreement has been entered into between the parties on those capacities by them. The agreement nowhere discloses that the relationship of the landlords and tenant between the parties had come to an end at any point of time. On the contrary, the agreement was executed in the facts and circumstances of the case which reveal that the respondent No. 1 had refused to vacate the old premises in spite of the order from the Bombay Municipal Corporation to demolish the old building. There was litigation between the parties without any success to the respondent No. 1 and only thereafter the present agreement came to be executed. In other words, the respondent No. 1 having failed to resist the claim of the appellants to vacate the premises in order to enable the appellants to construct new building thereupon, the respondents were left with no alternative than to execute the agreement in question. However, while executing the agreement, the bank did not surrender its tenancy right. It vacated the premises while reserving its right to occupy the premises in the new building.

12. Perhaps, it would have been a different thing if the agreement had to disclose that the respondent No. 1 had surrendered its leasehold rights, and independently as a proposed new tenant, the respondent No. 1 has entered into an

agreement with the appellants to hire premises in the building to be constructed in the property in place of the old demolished building. The agreement nowhere discloses any such intention or conduct on the part of the parties. On the contrary the agreement essentially discloses continuation of landlord-tenant relationship between the parties. The agreement refers to the existing relationship of the landlord-tenant in relation to the existing premises and further continuation of such relationship in relation to the premises in the new building to be constructed on demolition of the old building. The clause regarding payment of rent nowhere discloses that the same would amount to an independent agreement of lease in relation to the premises to be allotted, unconnected to the existing landlord-tenant relationship between the parties.

16. The Full Bench in Dattatraya Krishna Jangam's case (supra) had clearly held that section 28 of the Rent Act confers jurisdiction upon the special Court not only to decide questions referred to in the section, but also all matters which are incidental or ancillary to the determination of those questions and the said observation was made by relying upon the decision of the Apex Court in Meheresingh Sethi vs. Khurshed Satarawalla, reported in (1954) 56 Bom.L.R. 540 and Importers and Manufacturers Ltd. vs. Pheroze Framroze Taraporewalla, reported in (1953) 55 Bom.L.R. 271. It was further held that :-

"It has been contended that in a suit on contract the tenant claims his rights under the contract. He does not claim any rights under the Act. No claim or question, therefore, arises under the Act or any of its provisions. The suit is under the general law and will consequently be outside the purview of section 28. We have given our anxious consideration to these arguments, but we do not think that we can uphold them."

It was further held that:-

"Section 28 refers to any suit or proceeding between a landlord and a tenant relating to recovery of possession of any premises to which any of the provisions of Part II apply. These words are wide enough to include every suit between a landlord and a tenant, whether the tenancy is contractual or is continued by reason of the provisions of the Act, provided the relief asked for relates to possession. There is nothing in this section or in any other section of the Rent Act which would justify cutting down the scope of section 28 or holding that suits on contract were intended to be excluded from the purview of this section. The arguments advanced virtually amount to saying that a tenant holding the premises on a contract as contradistinguished from a tenant holding the premises by reason of the provisions of the Act would be entitled to the benefits under the Act, but would enforce his rights not in a Court of exclusive jurisdiction provided by the Act but in the ordinary Court. There is no reasonable ground for giving such an interpretation to the section. It is not in dispute that in cases of contractual tenancies a landlord will not be able to recover rent in a Court

other than the special Court. There is no reason to hold that even though that may be the case, suits relating to recovery of premises alleged to be held on contractual tenancies would lie in Courts other than special Courts. A suit on a contract will, therefore, also attract the provisions of section 28. Being a suit under section 29 it will be a suit under the Act and will have to be disposed of in conformity with the provisions of the Act." (Emphasis supplied.)

Referring to the contention that in a suit on contract, no relief is claimed under the Rent Act, it was observed by the Full Bench of this Court that:

".....On a proper interpretation of the provisions of section 28 the suit contemplated in that section is not only a suit between a landlord and a tenant in which that relationship is admitted, but also a suit in which it is claimed that the relationship of a landlord and tenant within the meaning of the Act subsists between the parties. The Courts which have jurisdiction to entertain and try such a suit are the Courts specified in section 28 and no other.

A tenant or a sub-tenant who claims his rights under the contract with his landlord is also a tenant within the meaning of the Act. His landlord is also a landlord within the meaning of the Act. The dispute between them in regard to possession must also be decided in conformity with the provisions of the Act. Even in a suit brought by a tenant on the basis of his contract, the matters which will be directly and substantially in issue will be: (1) whether the plaintiff is a tenant and whether the suit is between a tenant and the landlord as alleged, and (2) whether the plaintiff is entitled to relief in regard to possession. These will be the principal issues which the special Court will have to adjudicate upon. It will have to decide these issues directly and not incidentally. Consequently these issues cannot be the subject-matter of a fresh suit under section 29A." (Emphasis supplied)

Lastly it was ruled by the Full Bench of this Court that:-

"In our opinion, therefore, assuming that a claim to a tenancy or a sub-tenancy can be regarded as a question of title, the title in respect of which a suit will lie under section 29A must be a title de hors the Act, i.e. a title other than a title of a landlord, tenant or sub-tenant, whether such title is acquired or is alleged to have been acquired under a contract or under the provisions of the Act. If, therefore, in a suit or a proceeding under section 28 a person's claim relating to possession on the basis of his being a tenant or a sub-tenant has been negatived, he cannot file a suit under section 29A to again try and establish his rights as a tenant or a sub-tenant, as the case may be."

29. Reverting back to the facts of the case in hand and considering the law settled by the above referred decisions, as regards the first point for consideration it

is to be held that the agreement in question clearly discloses the same to be between the landlord and tenant and the relief which is asked for under the guise of specific performance of the said agreement in the suit filed by the respondent No. 1 is squarely in terms of the rights and obligations of the tenant and landlord under the Rent Act and therefore such a suit in the Civil Court is clearly hit by section 28 of the Rent Act”.

20 Thus when the agreement for grant of PAA executed between landlord, and tenant, specific performance of such agreement can be sought by filing a suit before Small Causes Court.

21 Since a fresh suit for specific performance of PAAA executed between landlord and tenant is maintainable before Small Causes Court, I do not see any difficulty why the obligations arising out of Consent Decree for allotment of PAA and payment of transit rent cannot be sought to be executed by filing execution proceedings before the Small Causes Court. In my view therefore, the execution proceedings filed by the Petitioner for fulfillment of obligations on the part of Respondent arising out of Consent Decree were perfectly maintainable before the Small Causes Court.

22 The Appellate Bench has held that Small Causes Court does not have jurisdiction to award compensation considering the provisions of the Rent Act. In my view, the Appellate Bench of the Small Causes Court has failed to appreciate that the prayer for compensation is not independent of the Consent Decree. If the Consent Decree provides for payment of monthly compensation, such direction is executable before Small Causes Court. The Appellate Bench has completely misdirected itself in getting confused between definitions of ‘Rent’ and ‘Compensation’. It ought to have

appreciated that the prayer for payment of compensation stems out of obligations imposed on Respondent in the Consent Decree. If such obligation was outside the Consent Decree, possibly the Appellate Bench would have been right in holding that prayer for compensation would have been outside the scope of the execution proceedings. It could however be within the scope of a fresh suit for specific performance of PAAA, so long as the PAAA is executed between Plaintiff and Defendant in their capacity as landlord and tenant. This is the law declared by Division Bench of this Court in *Tejbai Tejshi Dedhia and others* (supra). Therefore, jurisdiction of Small Causes Court cannot be said to be altogether excluded for enforcement of obligation to pay compensation, if the same arises out of agreement executed between a landlord and tenant.

23 The next issue for consideration is whether there is any obligation on the part of Respondent to pay monthly compensation to the Petitioner under the Consent Decree. As observed above, Consent Decree is in the form of package deal arrived at between landlord and tenant. The landlord agreed to recognize tenancy right of tenant subject to the tenant agreeing for redevelopment of the building on terms and conditions specified in Consent Terms. Thus grant of PAA totally admeasuring 950 square feet commercial carpet area is the deal offered by landlord to the tenant, against which tenant agreed to handover possession of tenanted premises to the landlord for redevelopment and only on account of tenant agreeing to these conditions, the landlord acknowledged tenancy rights of the tenant. Therefore, Consent Terms cannot be sub-classified into different compartments, as sought to be suggested by Mr. Agrawal, by treating that only the compartment relating to

declaration of tenancy rights of the Petitioner would remain part of the Consent Terms while the other compartments relating to redevelopment of the building and allotment of PAA being thrown out of the Consent Terms.

24 The Consent Terms no doubt acknowledges the fact that transit rent was payable to the Petitioner on account of he handing over possession of tenanted premises to the landlord during redevelopment process. However instead of receiving monthly transit rent/compensation, parties agreed additional commercial carpet area of 168 square feet would be allotted to the tenant in the new building. This arrangement could be either at the instance of the tenant or the same could be at the instance of the landlord as well. In a given case, the landlord would be short of funds and due to his inability to pay monthly transit rent, he may offer additional carpet area in the newly constructed building to the tenant. The issue is whether such arrangement would extinguish the right of tenant to receive monthly transit rent forever in the event of construction of the building being delayed.

25 In my view, building was to be constructed and PAA admeasuring 950 square feet commercial carpet area was to be handed over to the Petitioner tenant within 30 months of the date of issuance of commencement certificate. Therefore, liability to pay transit rent/compensation for the Respondent would remain suspended only for the period of 30 months from the date of issuance of commencement certificate. In other words, the value of 168 square feet commercial carpet area would be equivalent to transit rent/compensation payable for 30 months from the date of issuance of

commencement certificate. Since commencement certificate is issued on 20 August 2010 the liability to pay monthly transit rent/compensation would remain suspended only till 20 February 2013. It cannot be that the value of additional area admeasuring 168 square feet commercial carpet would continue to represent monthly transit rent for indefinite period of time. Therefore, beyond 20 February 2013, the liability to pay monthly compensation for the Respondent would resurface. In my view therefore Respondent is under obligation under the Consent Decree to pay monthly transit rent/compensation to the Petitioner after 20 February 2013 onwards till the date of handing over possession of PAA.

26. Reliance by Mr. Agrawal on judgments of the Apex Court in *Mangilal Sharma* (supra) and of High Courts in *Lingaraj Paikaray and others* (supra), *Rajendra Narain* (supra), *Gurnam Singh* (supra), *S.B. Singh* (supra), and *Potti Venkata Kasi Vishwanadham* (supra) does not assist the case of Respondent. The ratio of the above judgments is that declaratory decree merely declared the right of the Decree-Holder and does not direct Judgment Debtor to do or refrain from doing any particular act or thing. In the present case, the Consent Decree is not merely a declaratory decree. As held above, the declaration of tenancy rights of Petitioner is interlinked with various obligations which Respondent has agreed to perform under the Consent Decree. It is thus a composite decree whereby in addition to declaration of tenancy rights of Respondent, there are specific obligations on Respondent to handover PAA and pay transit rent/compensation (for which he agreed to allow additional commercial carpet area of 168 square feet).

27 Having answered the main issue in favour of the Petitioner and after having held that Respondent is liable to pay monthly transit rent/compensation from 20 February 2013 onwards, the next issue is about the quantum of such rent/compensation. Though the Small Causes Court determined the said amount at Rs.1,42,500/-, the Appellate Bench has not gone into the quantification exercise as it held that the execution proceedings themselves were not maintainable. One course of action to be adopted is to remand the proceedings to the Appellate Bench for determination of quantum of monthly rent/compensation. The other course, aimed at shortening the litigation between parties, is for this Court to decide the amount of compensation itself.

28 As observed above, Petitioner is out of his tenanted premises since the year 2009. Under the Consent Terms and Agreement, he was supposed to receive newly constructed commercial premises admeasuring 950 square feet carpet area by 20 February 2013. However till date, he has not received the same. The execution proceedings were filed by Petitioner in the year 2014 and by now period of 10 years has elapsed. I therefore do not think it appropriate to remand the proceedings before the Appellate Bench for fixing the quantum of transit rent/compensation with a view to relieve the parties of another round of litigation. I accordingly proceed to determine the amount of monthly compensation payable by Respondent to the Petitioner.

29 Before I go into the issue of quantification of monthly rent/compensation it must be observed here that the construction of the building appears to be complete. Mr. Agrawal has however stated that it may take

another one year to secure occupancy certificate in respect of the building. Thus the monthly transit rent/compensation will have to be paid by Respondent to the Petitioner from 20 February 2013 till about mid 2025.

30 The Trial Court determined the amount of monthly transit rent/compensation at Rs.1,42,500/-. The said quantification appears to have been done by the Small Causes Court on the evidence of M.M.S. Bilal, Architect who considered fair market price of the suit premises at Rs.30,000/- per square feet as well as the then prevailing monthly rent of shops in the area at average rate of Rs.150/- per square feet. It appears that no valuation report was produced by Respondent before the Small Causes Court. Instead, Respondent examined two other tenants to whom monthly transit rent of Rs.8,000/- per month was being paid since the year 2009 which was increased to Rs.10,000/- gradually. According to Mr. Agrawal the said rent of Rs.8,000/10,000 is in respect of ground floor shop premises, whereas the tenanted premises of the Petitioner were situated on third floor of the building.

31 Thus there appears to be a gross variation between the valuation indicated by Petitioner's witness and the actual rent paid by Respondent to the other tenants of the building. The commercial carpet area of 168 square feet agreed to be provided to the Petitioner in lieu of payment of monthly transit rent/compensation also provides some guidance about the possible rent of the building. The agreement was executed on 15 December 2009 and the period of 30 months for completion of building came to an end on 20 February 2013. Thus, for about four years parties agreed that value of

commercial carpet area of 168 square feet was sufficient to meet the amount of rent payable in respect of suit premises for four years. As per Petitioner's Architect the rate in the locality was Rs.30,000/- per square feet which would mean that 168 square feet carpet area would be worth Rs.50 odd lakhs and monthly rent for four years would be approximately Rs.1,05,000/-.

32 The suit premises are situated in Kamathipura area, which is not considered as to upmarket in Mumbai City. Though premises are commercial in nature the same are situated on third floor of tenanted building. The area of the tenanted premises was 782 square feet. While deciding the monthly rent/compensation payable to the Petitioner, regard must also be had to the fact that there are other tenants in the building to whom Respondent has responsibility to pay transit rent. The amount directed to be paid to the Petitioner is likely to be quoted by other tenants for increasing the amount of rent payable to them.

33 Considering the valuation presented by Petitioner, the amount of rent actually paid to other tenants of the building, location of the building, floor on which tenanted premises were situated, in my view, an amount of Rs. 70,000/- per month can be fixed as a reasonable amount of transit rent/compensation payable for the entire period from 20 February 2013 till date of handing over of possession of PAA to the Petitioner. While fixing the amount, I have taken into consideration inflation in the rent and instead of fixing different amounts for different years, a uniform amount of Rs.70,000/- per month is fixed as being payable to the Petitioner towards monthly transit rent/compensation in respect of the suit premises.

34 As observed above, Petitioner has already withdrawn an amount of Rs. 39,98,550/-. The Respondent shall pay the balance amount of monthly transit rent/compensation to the Petitioner computed at the rate of Rs.70,000/- per month. I accordingly proceed to pass the following order:

ORDER

- i) Judgment and order dated 4 May 2024 passed by Appellate Bench of the Small Causes Court in Execution Appeal No.37 of 2018 is set aside.
- ii) Judgment and order dated 11 December 2017 passed by Small Causes Court in Execution Application No.517 of 2014 is modified to the extent that Respondent shall pay to the Petitioner monthly transit rent/compensation at the rate of Rs. 70,000/- in respect of the period from March 2013 till the date of handing over possession of PAA.
- iii) Out of the amount of arrears of monthly transit rent/compensation computed at the rate of Rs. 70,000/- per month, the amount withdrawn by Petitioner shall be adjusted and Respondent shall pay balance amount to the Petitioner within a period of six weeks and shall thereafter continue to pay the monthly transit rent/compensation at the rate of Rs. 70,000/- till handing over possession of PAA.

35 With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no orders as to costs.

36 In view of the disposal of the Writ Petition, nothing would survive in the Interim Application and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)

Digitally signed
by
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