



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (W) NO.506 OF 2025
IN
WRIT PETITION NO.2002 OF 2023

(Dr. Harish s/o Narayandasji Rathii Vs. Akshay s/o Satishchandra Verma)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. J. M. Gandhi, Advocate for Petitioner.
Mr. Rohit M. Sharma, Advocate for Respondent.

CORAM: ANIL L. PANSARE, J.

DATE: 6th MAY, 2025.

1. By the present application, the respondent – landlord is seeking direction to the petitioner to pay to respondent the arrears of rent of Rs.1,27,500/- for the period from February, 2018 till April, 2022 and further to deposit/pay compensation amount at the rate of Rs.27,600/- per month from the date of judgment and decree passed by the first appellate court i.e. from 05.05.2022 till date of filing application and further to continue to deposit the same till disposal of the petition.

2. As regards the first prayer, the counsel for the petitioner has relied upon Order XV-A of Code of Civil Procedure which provide for striking off defence in a suit by a lessor. Under the said provision, in a suit filed by lessor or licensor against a lessee or a licensee for his eviction, the defendant (in the present case petitioner) is duty bound to

deposit such amount as the Court may direct on account of arrears and thereafter to continue to deposit the amount in each succeeding month. In the event of any default in making the deposit the Court may strike off the defence subject to what has been provided under sub-rule (2) of Order XV-A of the Code.

3. In the present case, the respondent/original plaintiff appears to have not filed such application either pending suit or pending first appeal. Rather, the counsel for the petitioner submits that amount has been deposited in a separate bank account because the respondent refused to accept the rent. Thus, there appears dispute as regards arrears of rent. In the circumstances and since the respondent, for no valid reason, failed to file application before the trial court or the appellate court, I am not inclined to consider the said prayer. The same is accordingly refused.

4. So far as payment of compensation is concerned, the law is well settled. In the case of ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC 705***, the Supreme Court on the point of granting compensation while passing order of stay has held thus:

18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is

statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment- creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

As such the judgment refers to the powers of appellate court to grant stay in terms of Order 41, Rule 5 of the Code of Civil Procedure, however, the decree in the present case having been passed by the first appellate court, the principle laid down as aforesaid can be taken aid of to compensate the respondent who holds a decree of eviction against the petitioner. The question is what amount will be reasonable in the present case.

5. Both the parties have relied upon the valuer's report. The report submitted by the respondent indicates that property will fetch rent at Rs.115/- per sq. ft. The property admeasures 240 sq. ft. and thus the amount of

rent per month will be Rs.27,600/-. This, analysis is based on the market value of the property. The valuer has considered valuation at the rate of Rs.23000/- per sq. ft. and accordingly ascertained the value of the property as Rs.23,000 x 240 sq. ft. = Rs.55,20,000/-. The rental value is calculated at the rate of 6% of the value of the property. The valuation at 6% is taken for yearly rent and accordingly the rent per month and consequently the rent per sq. ft. has been calculated. The valuer has referred to, two instances in support, where in the same in which locality the suit property is situated, rent at the rate of Rs.132/- per sq. ft. and Rs.122.19 per sq. ft. has been agreed between the parties as reflected in the documents executed in the year 2023-2024.

6. As against the valuation report submitted by the petitioner, the rental value is assessed at the rate of Rs.7500/- to Rs.9000/- per month. One of the reasons for such assessment is that property under question is a temporary structure built approximately 70 years back in the form of temporary shed. In my view, the status of structure so recorded appears to be not correct. The photographs shown by both the parties indicate that the suit shop is a *pucca* structure, though is an old structure. The structure does not appear to be temporary shed. Even otherwise temporary shed will not survive for 70 years. Further the shop is situated on a residential road at Sadar which is one of the prime locations for commercial activities in Nagpur.

7. As such the counsel for the petitioner argued that the two instances taken note of by the respondent valuer are of the property located on the other side of the road which has higher potential value than the location of property under question, the fact remains that both the properties are situated on the residential road and in absence of any cogent evidence it would not be desirable to differentiate between the pricing of the properties situated on either side of the road. At the same time, considering the old structure, I am of the view that the reasonable compensation would be at Rs.20,000/- per month.

8. Accordingly, the application is partly allowed. The petitioner shall deposit in the court an amount of Rs.20,000/- per month from the date of judgment i.e. from 05.05.2022 till the petition is disposed of. The amount of arrears accrued till date shall be deposited within six weeks from today, failing which the petition shall stand dismissed for non-compliance of order without further reference to the court. The petitioner shall then continue to deposit the aforesaid amount on or before 5th day of succeeding month. The application is disposed of in the above terms.

(ANIL L. PANSARE, J.)