



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13100 OF 2018

Ishwarlal Vrajlal Mistry

...Petitioner.

R/at. Ratan Terrace

Lady Hardings Road, Mahim,

Mumbai 400 016

vs.

1. Manohar U. Shetty

since deceased through Lrs.

1(a) Mrs.Usha Manohar Shetty (widow),

R/at "Akshay", Plot No.56,

Mysore Colony, Anik Village, Chembur,

Mumbai – 400 071

1(b) Mr. Rohit Manohar Shetty (son)

R/at at Flat Nos.9 & 10,

2nd floor, Zainab Villa,

362, Senapati Bapat Marg,

Mahim (W), Mumbai – 400 016

1(c) Mrs.Tilaka M. Shetty ((Married daughter)

R/at. Shreyas Building,

11th Road, Chembur, Mumbai- 400 071

1(d) Dr. Sharika Shushrut Prabhudesai

(Married daughter)

R/at. Gloriosa Apartments,

N. M.Kale Marg, Chandrakant Dhuru Wadi,

Dadar, Mumbai-400 028

2. Saraswati Motiram Pandya

(deleted)

3. Praful Motiram Pandya

4. Vinod Motiram Pandya

Nos.3 and 4 being the heirs and legal representatives

of Motiram Pandya (the original Defendant) with original



Defendant) with original Defendant No.2(c)
Saraswati Motiram Pandya (whose name
is deleted since deceased)
both residing at Marble Arch Tulsi Pipe Road,
now known as Senapati Bapat Marg,
M.T.P.S. III, Mahim, Mumbai – 400 016.

5. Smt. Savitaben Lalji Chawda,
R/at. 4-A, Varma Villa,
Bajaj Road, Vile Parle (W),
Mumbai – 400 058.
6. Smt. Kamlaben Vrajilal Mistry Mehata,
R/at Ground Floor,
Ratan Terrace, T. H. Kataria Marg,
Matunga Road, Mahim, Mumbai 400 016
7. Vijaya Vithaldas Girnare,
R/at. 45-D, Patel Co-op.
Housing Society, Plot No.32-C,
Military Camp, Santacruz (E),
Mumbai.
8. Rammanohar Varjilal Mistry,
R/at. Building No.104,
'A', 5th floor, Room No.503,
Near Hanuman Mandir,
Tilak Nagar, Mumbai 400 058.

...Respondents.

**WITH
WRIT PETITION NO.13102 OF 2018**

1. Praful Motiram Pandya
2. Vinod Motiram Pandya
being the heirs and legal
representatives of Motiram
Pandya (the original Defendant)
with original Defendant No.2(c)
Saraswati Motiram Pandya
(whose name is deleted since
deceased), both of Mumbai,
R/at. Marble Arch, Tulsi Pipe Road,
now known as Senapati Bapat Marg,



M.T.P.S. III, Mahim, Mumbai-400016.

...Petitioners

vs.

1. Manohar Ujjanna Shetty

(since deceased through his LRs.

...Respondents.

1(a) Mrs.Usha Manohar Shetty (widow),

R/at "Akshay", Plot No.56,

Mysore Colony, Anik Village, Chembur,

Mumbai – 400 071

1(b) Mr. Rohit Manohar Shetty (son)

R/at at Flat Nos.9 & 10,

2nd floor, Zainab Villa,

362, Senapati Bapat Marg,

Mahim (W), Mumbai – 400 016

1(c) Mrs.Tilaka M. Shetty ((Married daughter)

R/at. Shreyas Building,

11th Road, Chembur, Mumbai- 400 071

1(d) Dr. Sharika Shushrut Prabhudesai

(Married daughter)

R/at. Gloriosa Apartments

N. M.Kale Marg, Chandrakant Dhuru Wadi,

Dadar, Mumbai-400 028

2. Ishwarlal Vrajlal Mistry

R/at. Ratan Terrace, Lady Hardings Road,

Mahim, Mumbai 400 016

3. Sushila Sohanlal Joshi

R/at. Radheya Kutir, Room No.1,

Ground floor, M. B. Street,

Virar (West), Dist. Thane.

4. Renuka Dilip Bhatt

Haji Kasam Khot Chawl,

Room No.2, Trimuti Studio Compound,

S. V. Road, Dahisar (East), Mumbai.



5. Nirmala Kailash Joshi
R/at. Jan Manzil, 2nd floor, Masjid Lane,
Andheri (West),
Mumbai 400 058.
6. Smt. Savitaben Lalji Chawda
R/at. 4-A, Varma Villa,
Bajaj Road, Vile Parle (W),
Mumbai 400 058.
7. Smt. Kamlaben Vrajlal Mistry / Mehata,
R/at. Ground Floor, Ratan Terrace,
T. H. Katarai Marg, Matunga Road,
Mahim, Mumbai 400 016
8. Smt. Vijaya Vithaldas Girnare,
R/at. 45-D, Patel Co-op. Housing Society,
Plot No.32-C, Military Camp Santacruz (E),
Mumbai.
9. Shri Rammanohar Varjlal Mistry
R/at. Building No.104 'A',
Building, 5th floor, Room No.503,
Near Hanuman Mandir, Tilak Nagar,
Mumbai 400 058, Chembur,
Mumbai 400 089

Mr. G.S. Godbole along with N. Wadikar and Mangesh Bansod i/by Law Loyals for the petitioners in both the petitions.

Mr. A.M.Vernekar along with R.B.Patil for respondent Nos. 1A to 1D in both petitions.

CORAM: DAMA SESHADRI NAIDU, J.

JUDGMENT DATE: 18th December 2019



JUDGMENT :

Heard finally at the admission stage by the parties' consent.

2. There are two writ petitions: W. P. No.13100 of 2018 and W. P. No.13102 of 2018. They both impugn an interim order passed by the Appellate Bench of the Small Causes Court. To elaborate, the impugned orders stay the operation of the decree secured by the respondent-landlord subject to the writ petitioners' paying interim compensation.

3. If I go through the details, I note that in 1961 the respondent Trust leased out 435 sq. yards open space to the petitioners in W.P. No.13100 of 2018. The Petitioners could raise a structure and use it for the next 40 years. A formal agreement, it seems, was executed in 1964. Both the Trust and the petitioners-original tenants agreed that the tenants could construct four floors, that is ground-plus-three floors. The initial lease was 40 years, to be renewed one more term: 40 more years.

4. During the lease period, in 1963 the original tenant raised a structure. He constructed five shops on the ground floor and started using three upper floors as lodgings for prospective customers. Similarly, the Trust has leased out the terrace portion of an existing building in the same compound and permitted the original tenant to raise one more floor. That newly to-be-added floor could be used as a residence. Besides that, it has also leased out three garages near the existing building.

5. The lease ended in 2001. Meanwhile, the Trust assigned its leasehold rights to the original respondent, whose legal heirs are now on record. In 2005, the respondent assignee filed RAE & R Suit No.68/120/2005. He sought the tenants' eviction on the grounds of illegal subletting and change of user. Later, he has also



filed RAE Suit No.79/124/2008, about the same property. This time the eviction was sought because the tenant's sub-lessee has been using the property for illegal and immoral purposes. Eventually, on 30th January 2018, the trial Court decreed both the suits: eviction was ordered.

6. Aggrieved, the original lessees filed four appeals, but they challenged the judgment only in Suit No.79/124/2008. Similarly, the alleged sub-lessee, that is the second defendant, filed Appeal No.160/2018. He, too, challenged only one Judgment, the Judgment in RAE Suit No.68/120/2005.

7. In two appeals, they wanted the appellate Bench of the Small Cause Court to stay the operation of the decree in both the suits. Then, the appellate Bench, through impugned orders, stayed the decree subject to a condition: the tenants, as the appellants, should pay the monthly compensation at the rate determined by the appellate Bench. In this background, the appellants filed two writ petitions—WP No.1300 and 1301 of 2018—against the orders in the two appeals: Appeal No.160/2018 and 161/2018.

Submissions:

Petitioners:

8. Shri Godbole, the learned counsel for the petitioners in both the writ petitions, has submitted that the Trust itself was a lessee; it is not the owner. It has, thus, subleased the property to the petitioners. Drawing my attention to the lease agreement, Shri Godbole has argued that what was given to the petitioners was a piece of open land, upon which, by expending huge amounts, the original tenant raised superstructures. Therefore, considering the nature of the property leased out, the appellate Bench ought to have determined the compensation. Plainly put, the interim compensation must have been on the vacant land, but not on the structures the original tenant has raised.



9. Shri Godbole has emphasised the case holding of *Atma Ram Properties (P) Ltd., v. Federal Motors (P) Ltd.*^[1], and submitted that whatever structure the original tenant has raised would amount to an improvement on the leased property by the tenant. And, while determining compensation, the courts must exclude those improvements from the reckoning. Finally, he has submitted that the appellate Bench has considered even the staircase, passage, actual carpet area, and so on, which is impermissible. So, Shri Godbole asserts that the compensation fixed is exorbitant.

10. Shri Godbole, in the alternative, has submitted that the appellate Bench missed out on the vital aspects of the property when it determined the compensation. Then, he has repeatedly stressed, what he calls, the best course of adjudication for this Court: remanding the case to the appellate Bench for a fresh reconsideration, keeping in view not only the ratio of *Atma Ram Properties (P) Ltd.*, but also the Judgment of this Court in *Chandrakant Dhanu vs. Sharmila Kapur*^[2].

11. Eventually, Shri Godbole has submitted that the petitioners have placed no material before the appellate Bench for it to justify the compensation. According to him, even the valuation report the lessors have placed before the appellate Bench is exaggerated and lopsided. To justify the lessees' demand for remand, Shri Godbole assures the Court that the lessees will continue to pay the compensation determined by the Appellate Bench until it reconsiders the issue.

Respondents:

12. Shri Vernekar, the learned counsel for Respondent Nos.1A to 1D has submitted that the appellate Bench has considered all aspects, including those suggested in the valuation report. The valuation report, according to him, showed

¹ (2005) 1 SCC 705

² 2009 (2) Mh.L.J. 243



certain rates as plausible rates of rent the property could fetch. But the appellate Bench has disregarded them all and fixed the compensation at 50% of what has been suggested by the valuer. Thus, it has applied its mind and arrived at a rational rate.

13. Shri Vernekar has also submitted that this Court in *Super Max International Pvt. Ltd. v. State of Maharashtra*^[3], has held that the property is expected to fetch returns, at least, @6% of the value reflected in Ready Reckoner. If we go by the interim compensation fixed by the appellate Bench, according to him, the proportionate valuation the appellate Bench has taken is not at all exorbitant. In this context, Shri Vernekar has also pointed out that the properties are used for commercial purposes. And considering their use and potential, the appellate Bench has duly noted these aspects and fixed the compensation. At any rate, Shri Vernekar has submitted that the appellate Bench had exercised its discretion, which this Court ought not to disturb, for there are no compelling reasons to do so. Thus, he has urged the Court to dismiss the writ petitions.

14. Heard Shri Godbole, the learned counsel for the petitioners; and Shri Vernekar, the learned counsel for the respondents.

Discussion:

15. There is neither factual nor procedural controversy here. The landlords succeeded in their suit for eviction; the tenants and those claiming through those tenants have challenged the judgment and decree of eviction. In the appeal, the appellate Bench of the Small Cause Court stayed the judgment and decree. And that stay was subject to a condition: the appellants must pay monthly interim compensation to the landlords for the use and occupation of the leased properties. The dispute has arisen about the quantum, in fixing which the appellate Court has

3

2009 (2) BCR 789



exercised its discretion. Has it exercised its discretion perversely or without justification? That is the question I must answer.

16. One of the tenanted buildings is on a plot of 435 sq. yards; the whole structure is called “Arunoday.” It has a ground floor with five shops, besides three upper floors. Another tenanted building is “Marble Arch”; its third floor is the tenanted portion, for the original tenant was permitted to build on the terrace of the second floor. Besides, there are three garages.

17. The tenancy began in 1961, and the lease was entered into in 1963. It was for 40 years, extendable by one more term of the same period. Both the original lessor and the original lessee are no more; their legal representatives are litigating now. Besides, a third party—that is a sublessee or a trespasser, as the courts to decide—has also been in the fray.

18. We need not refer to the rival contentions on the merits of the case: the alleged breach of lease conditions, illegal subletting, unauthorized—even immoral use—of the leased property, and so on. We will confine our discussion to the interim compensation: to be specific, its quantum. But before proceeding further, we will examine the precedential position, for the appellants have heavily relied on them. Earlier this Court in *Suhas Janardan Chavan v. Rajesh Housing Pvt. Ltd.*,^[4] has examined threadbare most decisions affecting the question of interim compensation. I will substantially reproduce the Court’s observations then made.

19. Invariably, as Order 41 Rule 5 of CPC mandates, the mere filing of an appeal does not arrest the operation of the decree. But pending the appeal, if the decree was executed, that would render the appellant’s possible success in the appeal nugatory—an empty formality or ritual. So the Code, under Order 41, Rule 5, contemplates or provides for maintaining *status quo ante* until the suit proceedings

⁴Judgment, dt.28.08.2019, in WP No.9384 of 2018 & Batch (MANU/MH/2575/ 2019)



reach their logical conclusion. For the appeal is in continuation of the original proceedings. But that prohibition of the statute *quo ante* comes with conditions attached, including compensation, as stated in Order 41 Rule 5(3)(c) of CPC. In this statutory backdrop, let us examine the precedential position.

(a) Atma Ram Properties:

20. In *Atma Ram Properties*, the Rent Control Tribunal ordered the respondent-tenant to pay interim compensation at a particular rate for its staying the decree. The tenant challenged it before the High Court; he contended that the Tribunal ought not to have required him to deposit more than the contractual rent. The High Court accepted that contention; it modified the stay order. So the appellant-landlord went to the Supreme Court.

21. In *Atma Ram Properties*, the Supreme Court observed that “the litigation goes on for an unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises.” It has, then, observed that once the lease or tenancy stands determined, say, through a decree from a competent court, the tenant’s right to continue to possess the leased property ends. And for his continued use and occupation of the property for any period thereafter, he must pay damages at the rate the landlord could have let out the premises if there had been no tenant or the tenant had vacated with the lease termination. Thus, *Atma Ram Properties* has summed up the principles of interim compensation:

(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, *the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those*



proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, *the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises.* The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;

(3) the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a later date.

(italics supplied)

(b) Super Max International:

22. In this case, a three-Judge Bench of the Supreme Court had a reference before it. The reference was because of what was felt to be a conflict between two of its Division Bench decisions: *Atma Ram Properties* and *Niyas Ahmad Khan*.

23. Then, *Super Max International* has held that there was no conflict between *Atma Ram Properties* and *Niyas Ahmad Khan v. Mahmood Rahmat Ullah Khan*⁵. In *Atma Ram Properties* the landlord challenged the restriction that he should not withdraw the amounts the tenant deposited pending the appeal. The High Court allowed his application under Article 227 of the Constitution of India. The Supreme Court restored the Tribunal's order: the landlord should not withdraw the amounts. In *Niays Ahmad Khan*, the High Court awarded enhanced interim compensation unasked for. In that factual backdrop, the Supreme Court has disproved the High Court's approach.

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(2008) 7 SCC 539



24. In the end, after exhaustively analysing the issue of interim compensation, *Super Max International* has held that “in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act, it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent.” That said, it has cautioned that in fixing the amount, “the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.”

25. Then, *Super Max International* has held that the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side, depending on the result. If the Court finds it just and expedient that the amount fixed by it should go to the landlord even while the matter is pending, it must be careful to direct payment to the landlord on terms so that if the final decision goes in the tenants’ favour, he can recover the amounts with no undue delay or complication.

(b) Chandrakant Dhanu:

26. In *Chandrakant Dhanu v. Sharmila Kapur*^[6], the petitioners-tenant suffered a decree of eviction. In the appeal, the appellate Bench of the Court of Small Causes, fixing Rs.50,000/- as the monthly compensation for the tenant to pay as a precondition to have the decree stayed. Aggrieved, he filed a writ petition before this Court.

27. *Chandrakant Dhanu*, per a learned Single Judge, holds that “there is no question of fixing any compensation without any basis. The burden is on the

6

2009 (1) Bom CR 698



landlord to prove his claim of fair and reasonable compensation by putting the material on record, including expert opinion report and other such instances etc.” It permits the tenant, too, to show the contra material, if any.

What is determined now?

28. This Court in *Previn Govind Sharma v. Dinyar Jal Jamshedji*[⁷] has considered the issue in detail. After examining the above decisions besides others, it has held that this Court under Order 41, Rule 5 CPC does not fix *mesne* profits *per se*. If this Court indulges in a threadbare analysis and judicially determines the relative merits of the rival *mesne* profits reports at an interlocutory stage—more so under Order 41, Rule 5 of CPC—that preempts the trial Court’s legitimate adjudicatory powers under Order 20, Rule 12 of CPC. Here, what this Court intends, or requires, to do is to use the “commonsense which is a cluster of life’s experiences” rather than depend on the rival facts presented by warring litigants.”

Pragmatic Pursuit:

29. Then, *Previn Govind Sharma* has recorded what could be a pragmatic approach. Indeed, any adjudication, if it were, under Order 41, Rule 5 of CPC involves an element of *ad hocism*, a permissible level of guesswork, and a dose of discretion. The interim compensation, I may note, is to ensure that neither party gets an unfair advantage over the other. Either too high an amount or too low an amount as compensation prejudices one or the other party. The whole endeavour under Order 41, Rule 5 of CPC is to keep the rival parties on an even keel. It is a balancing act between the competing interests of a party who secured a decree and a party who entertains the hope of emerging successful in the appeal proceedings.

30. Order 41, Rule 5, we may note, is a step-in-aid in appeal. The respondent has the reality of decree; the appellant the possibility of its reversal. The decree, say

7

Decided on 21st June 2019



in an eviction suit, alters the characters of parties. The tenant is no longer a tenant; he is, at best, an occupant. And that occupation stands branded as unauthorised. The suspension of the decree does not obliterate the judicial findings; it only keeps its effect—its execution—at bay. So to have a binding decision put on hold in the name of stay, the appellant needs to submit himself to certain terms. The terms of, for example, paying monetary compensation.

31. If we continue in the same vein, a stay is not for mere asking. Nor can the appellant paint himself a victim under Order 41, Rule 5 of CPC. That said, I must also acknowledge that the appellate courts will not lose sight of the distinction between what is ideal and what is practical; what is discretionary and what is arbitrary; what is a fair guess and what is a wild whim.

32. With the judicial overload, docket explosion, and clogging adjudicatory avenues at every echelon, we cannot expect a minitrial even under Order 41, Rule 5 of CPC, for fixing, say, an interim compensation. It is ideal. But with the litigious multitude knocking at the court's doors clamouring for speedy justice, it is an unaffordable legal luxury.

33. Here, in this writ petition, we are dealing with an interlocutory order the appellant Bench rendered while staying the decree of eviction. This Court can only examine whether the appellate Bench has properly or judicially exercised its discretion. Nothing more.

34. The precedents I have already referred to have consistently held that the interim compensation to be fixed cannot be arbitrary. In the same breath, I must observe that the appellate Court's power under Order 41, Rule 5 is discretionary. And so long as that exercise is not arbitrary or perverse, the Revisional Court, either under Section 115 of CPC or under Article 227 of the Constitution of India, does not interfere.



35. Before I could determine what may be the reasonable amount, I must examine whether the order impugned is arbitrary or perverse. If it is neither, I must not impose my view over that of the appellate Bench. Merely because an alternative view is possible, the Revisional Courts will not upset otherwise well-founded orders of discretion. Judicial interference requires much more than a plausible or a probable alternative view.

Back to Brass-tacks:

36. The lessor has pleaded that the leased property would fetch Rs. 6,25,480/- per month as per the Valuers Report. It insisted that the appellants are also liable to pay the compensation on other incidental grounds.

(a) Marble Arch:

37. As per the valuer's report, the lessor has claimed market rent at Rs.108/- per sq.ft for the third floor of Marble Arch; it comes to Rs. 3,92,6156/- per month. The lessor has claimed market rent for the garages at Rs.2,32,865/- per month. It wants the lessees not to part with the possession of the suit property or create third-party interest.

38. The lessees wanted to reckon the leased property only as vacant land. And their every other plea is connected to this plea. Of course, they have also assailed the valuation the lessor has presented.

39. On facts, the appellate Bench has noted that the area of the third floor of Marble Arch in the valuation report is 3,635 sq. ft. The carpet area is claimed to be 2,629 sq. ft. In fact, the lessor has accepted that the area of 3635.32 sq. ft; that is, the third floor of Marble Arch includes common space, such as staircase, balcony. Excluding common areas, then, it comes to 3,188 sq. ft.

40. To sum up, the appellate Bench has recorded the lessor's claim for rent as follows:



- (a) Rent @ Rs. 108/- per sq. ft for the residential premises—that is, the third floor of Marble Arch building;
- (b) Rent @Rs.6944.44 ps per sq. ft., for the three garages, situated behind Arunoday building;
- (c) Rent Rs. 1,77,848/- for the open land.

41. Then, the appellate Bench has examined and analysed the valuation report, besides the Ready Reckoner for Zone No. 17/115, between Lady Jamshedji Road portion, Gadkari Chowk, and City Light Cinema Junction. It has also taken note of the Ready Reckoner the appellants have filed in Appeal No. 161 fo 2018. It relates to Zone No. 17/118, covering the locality where the suit property stands. The valuation in that Ready Reckoner, as the appellate Bench notes, is “slightly on the lower side.”

42. To the credit of the appellate Bench, it has compared the rental values of the properties in the vicinity. Then, it has noted the plea of one of the appellants that he is a plumber and that, because of his old age, he can pay “at the most Rs. 20,000/- per month for the whole premises.”

43. Then the appellate Bench has recorded:

“It is not disputed that the appellant has made a statement across the bar the he is ready to continue to pay the municipal takes in respect of the suit premises. In question, apart from the compensation amount. The appellant has also made a statement that he would furnish the details of the occupants and will not create any third-party rights.”

44. Finally, the appellate Bench has fixed the rental value of the property in Marble Arch, admeasuring 3188 sq. ft, @Rs.40/-, as against Rs. 108/- per sq. ft the lessor has claimed. In fact, the appellate Bench has found that the property is used for residential purposes. The total has, thus, come to Rs.1,27,520/- per month.



45. The appellate Bench has found the three garages measuring up to 415.08 sq.ft. They are used for “stitching of readymade garments by the sub-tenants”. So the appellate Bench has found it, rightly so, to be commercial use. But the appellate Bench has pointed out that the respondent lessor has not spelt out how he claimed compensation @Rs.6,944.44 ps per sq. ft. It has felt it to be exorbitant. Then, the appellate Bench considered the locality, purpose, and the nature of business, felt that the shops would not fetch more than @ Rs.100/- per sq. ft. As such, the approximate market rent was fixed at Rs.1,30,400/ for the shops.

46. For the open space 300 sq. ft., the appellate Bench has fixed the compensation @ Rs.25/- per sq.ft., the total being Rs.75,000/-. It was against the lessor’s claim for Rs. 1,77,848/-.

Arunoday:

47. The tenants or their assignees have three floors in their possession, the total extent being 4434 sq. ft. They run a lodge there. The lessor claimed compensation @ Rs.108/- per sq. ft. But the appellate Bench has compared the rental values in the vicinity and felt that Rs.60/- per sq. ft., is justified. There are five shops on the ground floor, admeasuring 1,304 sq. ft.

48. For the five shops in the ground floor, the Valuer’s Report has given Rs.399/- per sq. ft., rent. for the five shops. After a thorough analysis, the appellate Bench has fixed the rent at Rs.100/- per sq. ft., the total coming to Rs.1,30,400/-.

Conclusion:

49. I reckon the appellant Bench orders are well-reasoned and impeccable. They need no interference. It may be interesting to note that the lessees do not seem to have filed any valuation report, besides relying on the Ready Reckoner. The appellate Bench has fixed the compensation at the rates lower than those



shown in the Ready Reckoner. So this Court's remanding the matter, as the lessees have insisted, serves no purpose.

50. In matters like these, the scope for judicial interference by the revisional courts is narrow. More particularly, the appellate Bench has exercised its discretion; that discretion it has exercised judiciously.

I, therefore, dismiss both the writ petitions as devoid of any merit.

In view of disposal of the writ petitions, the civil applications, if any, stand disposed of.

If the petitioners have deposited any amount before the Registry of this Court in compliance with the Court's directions, as these Writ Petitions now stand disposed of, the Registry will transmit the amount to the Registry of the Small Causes Court, Mumbai.

[DAMA SESHADRI NAIDU, J.]