

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5435 OF 2015

Naresh Pukhraj Jain .. Petitioner
vs.
Mohanlal Chhaganlal Doshi .. Respondent

Mr. Hemant Mehta i/b. M/s. Mehta & Co. for Petitioner.
Mr. Harshad Sathe for Respondent.

CORAM : M. S. SONAK, J.
DATE: 08 AUGUST 2017

P.C :

1] Heard Mr. Mehta for the petitioner and Mr. Sathe for the respondent.

2] Mr. Mehta submits that as per the description of the suit premises in the amended plaint, it is clear that the suit premises are located within the jurisdiction of the Pune Cantonment Board. He submits that the issue as to whether the provisions of the Maharashtra Rent Control Act 1999 apply to the premises situate within a Cantonment area is pending consideration before the Division Bench in writ petition no. 2937 of 2011 and connected matters. He submits that in terms of the directions of the Apex Court on 15th February 2011 in Civil Appeal No. 1999 of 2011, this Court has been requested to decide such issue expeditiously. In support of his submissions, he relies upon the order dated 2nd April 2014

made by the Division Bench in writ petition no. 2937 of 2011 and connected matters.

3] Mr. Sathe submits that this issue which is now sought to be raised was never raised by the petitioner either before the trial court or the appeal court. He submits that this issue involves mixed question of law and facts. As such, he submits that the petitioner is not entitled to raise such an issue for the first time in this Court.

4] Whilst keeping the objections open, Rule is granted in the petition.

5] The suit premises are located in the Cantonment area of Pune and further the same are used for commercial purposes of undertaking jewellery business.

6] There shall be interim relief in terms of prayer clause (c) subject however to the petitioner depositing in this Court compensation at the rate of Rs.25,000/- per month effective from 1st April 2015. This is because the eviction decree made by the appeal court is dated 31st March 2015.

7] The determination as aforesaid, is presently on *ad hoc* basis.

The parties are at liberty to file affidavits and place materials before this Court within a period of eight weeks from today. Thereupon the issue of reasonable compensation will be taken up for consideration and determination.

8] This direction for deposit is in terms of the decisions of the Hon'ble Supreme Court in the case of ***Atmaram Properties (P) Ltd. vs. Federal Motors (P) Ltd.***¹ and ***State of Maharashtra & Anr. vs. Super Max International Pvt. Ltd. & Ors.***²

9] The time limit for deposit of arrears shall be eight weeks from today.

10] It is made clear that in case of two consecutive defaults or three non consecutive defaults, interim relief now granted shall stand vacated without any further reference to this Court.

11] Liberty to apply.

(M. S. SONAK, J.)

Chandka

1 2005 (1) SCC 705

2 2009 (5) All MR 1001