



HUSENBASHA
RAHAMAN
NADAF
Digitally
signed by
HUSENBASHA
RAHAMAN
NADAF
Date:
2026.05.08
19:45:07
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.233 OF 2017
IN
CIVIL REVISION APPLICATION NO.557 OF 2010

M/s. Vora & Co. & Ors. ...Applicants
IN THE MATTER BETWEEN
Lilaben Manibhai Patel & Ors. ... Rev. Applicants
Versus
M/s. Vora & Co. & Ors.Respondents

Mr. Rajesh Kachare a/w Mr. Amol P Mhatre & Ms. Sonal Dabholkar
for the Applicants.

Mr. Rohan Sawant a/w Mr. Aman Saraf, Mr. Priyank Priyadarshi & Mr.
Romin Sangoi for the Revision Applicants/Respondents in CA.

CORAM : M.M. SATHAYE, J.

DATE : 8th MAY, 2026

P.C. :

1. Heard learned counsel for the parties. Perused the record.
2. The Applicants are Plaintiffs, being Respondent Nos. 1 to 4 in Civil Revision Application. Revision Applicants are Defendant Nos. 4, 5, 7 & 11.
3. This application is filed by Plaintiffs seeking directions to Revision Applicants to deposit monthly compensation @ Rs.17,17,467.60 per month from the date of decree i.e. 30.06.2010 passed by the Appellate Bench of Small Causes Court at Mumbai, based on law laid down by the Hon'ble Supreme Court in the cases of **Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd. (2005) 1 SCC 705** and **State of Maharashtra and Anr. Vs. Super Max**



International Private Limited and Ors. (2009) 9 SCC 772.

4. Few facts necessary for disposal of this application are as under.

4.1. The Applicants filed L.E.&C. Suit No. 15/17 of 1987 before the Small Causes Court at Mumbai seeking eviction of the Defendants from suit premises and for mesne profits and other reliefs. The suit was filed invoking provisions of Section 41 of the Presidency Small Cause Courts Act, 1882 ('PSCC' Act).

4.2. Two ground floor shops and rooms being shop Nos.2 and 3, room Nos.2 & 3 and four garage Nos.1A, 3, 5 and 6 and cabin admeasuring 100 sq. ft. on the terrace of the building previously known as 'Lila Mansion', now known as 'La Kozy Mansion' situated at 21, Chowpatty Sea Face, Mumbai - 400 007 are collectively the subject matter premises which are hereinafter referred to as 'suit premises' for short.

4.3. Learned Small Causes Court at Mumbai (Judge C.R. No. 13) by judgment and decree dated 29.11.2003 dismissed the said suit. The Applicants filed Appeal No.449/2004 before the Appellate Bench of the Small Causes Court challenging the decree of dismissal.

4.4. By judgment and decree dated 30.06.2010, the Appellate Bench of the Small Causes Court at Mumbai, allowed the appeal and decreed the suit for eviction directing the Revision Applicants to vacate the suit premises within 3 months. The enquiry into mesne profits under Order XX Rule 12 of Civil Procedure Code, 1908 ('CPC',



for short) was initiated.

4.5. The Revision Applicants filed the above Civil Revision Application No.557 of 2010 in this Court, which was admitted on 19.12.2011 and ad-interim stay was continued. It is pending since then.

5. This application is filed contending *inter alia* as under. That despite the decree of possession in their favour, due to interim stay granted by this Court, the Applicants/Plaintiffs cannot execute the decree of possession. That Applicants could not file the present application immediately after admission of the civil revision application due to their old age as the Applicants are senior citizens. That since there is a decree of possession in Applicants' favour, the Revision Applicants must pay compensation at market rate as per law laid down by Hon'ble Supreme Court in the case of **Atma Ram Properties (Supra)** and **State of Maharashtra Vs. Super Max (Supra)**, if interim stay to the decree of eviction is to be continued. The Applicants have produced valuation report indicating that monthly rent of the suit premises can approximately be Rs.17,17,467.60 per month.

6. Revision Applicants have filed affidavit in reply dated 02.08.2019 contending *inter alia* as under. That the application is not maintainable. That Revision Application is admitted after hearing both sides including present Applicants. That the order of granting interim stay is not challenged. That no condition has been imposed at the time of passing interim order dated 19.12.2011. That no case for



review of said order is made. That it would be unjust to impose any condition after a period of several years. That under **Atma Ram Properties (supra) and State of Maharashtra Vs. Super Max (supra)**, what is held by the Apex Court is that it is 'open' for the Appellate Court or Revisional Court to impose a condition and the Appellate or Revisional Court 'may' impose a condition while granting stay to the decree of eviction. That present application amounts to seeking recall/review/modification of the order dated 19.12.2011. That the present application is an afterthought and suffers from gross delay and laches, being filed in 2016. That the power to impose condition is purely discretionary, which has been already exercised in the year 2011. The merits of the main revision application are also contended. However, no other valuation report is brought on record to counter the valuation report filed on record.

7. The Applicants filed Rejoinder-affidavit dated 02.12.2019, contending *inter alia* as under. That the affidavit-in-reply is filed belatedly after a passage of nearly 3 years after filing the civil application. That the order dated 19.12.2011 is an interim order and therefore there is no question of the said order attaining finality. That application is filed because final hearing of the revision application would take considerable time. That the Applicants are not seeking any modification or review of the order dated 19.12.2011, however, they are seeking direction of deposit of compensation at market rate as a condition to continue interim stay. That the objection about present application being an application for review or recall is hyper technical objection and needs to be rejected. Rival contentions about



the merits of revision application are also made.

8. The learned counsel Mr. Kachare, appearing for the Applicants submitted that the Applicants are not seeking any review of the order of interim stay and what is prayed is imposing of condition for continuation of interim stay. He submitted that the Applicant No. 3 is about 76 years old licensor who is facing day to day cause of action, because he is not able to execute the decree of possession in his favour. He submitted that the valuation report is placed on record giving clear idea about the market rate. He further submitted that right to claim interim compensation is a continuous cause of action because every day, during pendency of the revision application, the decree-holders are barred from executing decree of possession.

9. On the other hand, Mr. Sawant appearing for the Revision Applicants submitted that when the interim stay was granted, both parties were heard in 2011 and present application is filed in 2016 after a period of 5 years. He submitted that it amounts to seeking review of the 2011 order. He submitted that the leave and license agreement which is considered as 'an instance' of market rent is not produced along with valuation report. He submitted that the multiplier of 1.27 applied in valuation report is not explained. He submitted that if the aspect of interim compensation is to be considered on merits, then Court may appoint a Valuer. He submitted that the civil revision application itself may be taken up for final hearing. He relied upon the **Brijbhushan Chandrabali Shukla Vs. Mahendra Yadav 2024 SCC OnLine Bom 418** in support of his contention that belated application may not be considered as it



amounts to modification of order of interim stay/admission.

10. I have considered the rival submissions and perused the record.

11. At the outset, it is important to note that though the revision application is admitted in 2011, it is not possible to take up the revision application immediately for final disposal. In that view of the matter, rival contentions raised on merits of revision application cannot be considered. The merits of main revision application are also not being considered to avoid prejudice being caused to either party.

12. It is a matter of record that on 30.09.2010, the decree of possession was stayed for a period of three weeks which was continued on 23.11.2010 and 18.01.2011 and thereafter from time to time. Finally on 19.12.2011, after hearing both sides, Rule was granted by observing that arguable questions are raised. The ad-interim relief granted earlier was continued until further orders.

13. Perusal of earlier orders including the order dated 19.12.2011, does not indicate that parties were heard on the aspect of interim compensation as per the law laid down in **Atma Ram Properties (Supra)** and **State Vs. Super Max (Supra)**.

14. In another case - **Super Max International Pvt. Ltd and Ors. Vs. R. M. Choksey & Co. and Ors. 2009 SCC OnLine Bom 324**, learned Single Judge of this Court considered similar argument that application for interim compensation amounts to review / modification of earlier order of admission and interim relief. When



this Court has held as under :

“7. Learned Counsel for the tenants submits that it would amount to review of the Order dated 22nd February, 2006. It is then contended that keeping in mind the parameters for exercising review jurisdiction, it is not open to this Court to impose any further condition other than the one provided in the interim order dated 22nd February, 2006. To buttress this contention, reliance is placed on the decision of the Apex Court in the case of *Haridas Das v. Usha Rani Banik(Smt)* reported in (2006) 4 SCC 78. The argument clearly overlooks that it is not a case of review of the order. It would have been a case of review, if the Court was called upon to recall the entire interim order. The landlord by this application is merely asking for imposing additional condition to allow the tenants to enjoy the suit property in lieu of interim protection during the pendency of the Writ Petition. Granting of this relief at best would result in modification of the interim order and not review thereof. Thus understood, the principle stated by the Apex Court in *Haridas Das (Supra)* is of no avail to the tenants. Moreover, the fact that the earlier unconditional interim order was granted after hearing both sides cannot preclude the landlord from applying for modification of the order so as to impose some legitimate condition to meet the ends of justice. Keeping in mind that the Writ Petition is not likely to reach for hearing for quite some time, the landlord who has succeeded in getting decree of eviction is entitled to claim suitable interim arrangement to meet the ends of justice.

8. It was then argued that the legal position stated by the Apex Court in the *Atma Ram Properties(supra)* case could have been invoked by the landlord, when the matter was argued on 22nd February,2006. The fact that such argument was not canvassed on



behalf of the landlord on 22nd February, 2006 in my opinion, in no way preclude the landlord to later on apply for imposing additional condition to enable the tenants to avail of the interim protection in terms of the Order dated 22nd February, 2006. There is nothing in law, which would preclude the landlord in doing so. In other words, the fact that no argument for imposing condition, now prayed by the landlord, was canvassed on 22nd February, 2006, will come in the way of the landlord to call upon the Court to impose appropriate condition in terms of the legal position stated by the Apex Court in Atma Ram Properties case (supra). Indeed, the question whether the landlord would be entitled for arrears of interim monthly compensation with retrospective effect is a matter within the discretion of the Court. The Court may confine the relief to the landlord from the date of the filing of the present Application. That would meet the ends of justice and address the concern of the tenants as well to that extent.”

(emphasis supplied)

15. Agreeing with the above view, I hold that the present application by decree-holders does not amount to seeking review or modification of the order dated 19.12.2011 or its recall.

16. Admittedly, the Revision Applicants have not produced any counter-valuation report. Perusal of the valuation report relied upon by the Applicants indicates that the concerned Architect/Surveyor has considered location and area of various rooms and shops forming the suit premises and by referring to a leave and license agreement which is used as ‘an instance’, an amount is suggested as market rent as on the date of the valuation report (dated 01.10.2012).



17. It is important to note that the leave and license agreement referred to in the valuation report is of November 2011 and the report itself is given in October 2012 and therefore as on today after about 14 years thereafter, the value of suit premises ought to have only increased. The suit premises are admittedly situated at the most prime locality of Mumbai at Chowpatty Sea Face. In that view of the matter, since the Applicants/deed holders are deprived of fruits of possession decree, owing to interim stay granted by this Court, it is not just and proper to reject the prayer made by deed-holders on the grounds that the application was filed in 2016.

18. The application, though filed in 2016, has remained pending for one reason or the other. Neither party can be blamed for the pendency of the application since 2016. However, fact remains that deed holders have remained deprived of the fruits of the possession decree.

19. In **Brijhushan Chandrabali Shukla (Supra)** relied upon by the Revision Applicants-judgment debtors, the application for interim compensation was filed after a long period of 11 years from admission/interim relief. This fact is clear from paragraph No. 10 thereof. In that context, the learned Single Judge of this Court found that no change in circumstance has been brought on record and therefore, it was held that entertaining an application for interim compensation after 11 years would amount to modification of the order passed while admitting the civil revision application. The learned Single Judge was also of the opinion that the main civil revision application is ready for final hearing.



20. In the present case at hand, according to office note, record and proceedings is not yet received; matter is also dismissed against many Respondents. According to the official website, the civil revision application is shown as unready. Therefore, it is clear that the present civil revision application is not ready for final hearing.

21. In such circumstances, the facts of the present case are clearly distinguishable and therefore the judgment of **Brijbhushan Chandrabali Shukla (Supra)** will not help the Revision Applicants-judgment debtors.

22. Considering that the valuation report is of 2012 and many years have passed, the potential of suit premises to fetch market rent must have actually gone up. However, since the application was filed after 5 years and since there is no other material available before the Court, the valuation as on October 2012 can be safely accepted.

23. Therefore, since the Applicants-decree holders are deprived of the decree of possession, following the law laid down by Hon'ble Supreme Court in **Atma Ram Properties (Supra)** and **State of Maharashtra Vs. Super Max (Supra)**, I find it just and proper to allow the application partly.

24. Hence the **application is disposed of** by passing following order.

(a) The application is partly allowed.

(b) The interim stay to eviction decree shall continue subject to the Revision-Applicants depositing monthly compensation



@ Rs.17,17,467.60 per month from date of filing of this application (16.09.2016 as per official website) till 31.05.2026 in this Court within a period of 8 weeks from today and further subject to Revision-Applicants continuing to deposit the interim compensation at aforesaid rate from 1st June, 2026 during pendency of the civil revision application on or before 15th of each month.

(c) The amount deposited, pursuant to this order, shall be subject to final out come of civil revision application and shall also be considered and adjusted in calculation of the mesne profits.

(d) The amount deposited, pursuant to this order, shall be invested in any Nationalised Bank initially for a period of 1 year and thereafter renewed as per prevalent practice.

(e) The Applicants are at liberty to apply for withdrawal of deposited amount and such application shall be decided on its own merits without being influenced by the present order.

25. At the request of learned counsel for the Revision-Applicants, the operation of this order is stayed for a period of 4 weeks from today.

26. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)