

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

**5 CIVIL APPLICATION NO.653 OF 2022
IN SA/182/2018 WITH CA/652/2022 IN SA/182/2018**

MURGAPPA CHANNAPPA HOLKUNDE (DIED) LRS NAGAPPA
VERSUS
BASAPPA VEERPAKSHAPPA HOLKUNDE AND OTHERS

...
Advocate for Applicant : Ms Madhaveshwari S. Mhase
Advocate for Respondents : Mr. Nitin Jagadale h/f Mr. V. D. Salunke
...

**CORAM : RAJESH S. PATIL, J.
DATE : DECEMBER 19, 2022**

PER COURT : -

1. This Civil Application is filed by landlord for seeking direction to the tenant to deposit an amount of Rs. 10,000/- per month in this Court, as compensation during the pendency of the instant second appeal. The Second Appeal is filed by the tenant against the concurrent findings of both of the courts. However, this Second Appeal was admitted on 23.08.2021. Immediately thereafter, the present Civil Application is filed within five months. So also, a separate civil application for fixing the matter for final hearing has been filed. It is the case of the applicant / landlord that from the year 1977, the tenant has not paid per month rent which was at that time Rs. 50/- per year. The suit premises is an open plot of land *ad measuring* 250 sq.ft. It is the case of landlord that the tenant is running a grocery shop on the suit premises and is earning profit out of it.

2. The advocate for the landlord / applicant has referred to the judgments in the case of **Atma Ram Properties (P) Ltd. vs. M/s. Federal Motors Pvt. Ltd.** reported in (2005) 1 SCC 705 and **The State of Maharashtra and Another vs. M/s. Super Max International Pvt. Ltd. & Ors.** reported in (2009) 9 SCC 742. According to her, there are even other judgments where High Court has fixed the compensation of the suit premises as per market value during the pendency of the appeal proceedings.

3. The advocate for the original tenant is seeking an adjournment as he wants to take instructions from his client as to whether his client is ready to pay the compensation as per original rate fixed in the year 1974.

4. Advocate for the applicant (landlord) states that she has sought compensation to be paid during the pendency of the Second Appeal from the date of the trial Court's decree i.e. to the tune of Rs.10,000/- per month relying upon the various authorities of the Supreme Court and the High Court.

5. In view of this, the matter is adjourned by four weeks for both the parties to take instructions. So also the parties can file the
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relevant additional affidavit along with relevant documents of proof, so that this Court will fix the compensation to be paid during the pendency of this Second Appeal.

6. Advocate for the applicant, at this stage, states that she is ready to file affidavit along with all the relevant documents, during the course of the day.

7. As the advocate for the original appellant (tenant) is seeking the matter to be listed beyond vacation, stand over to **16th January, 2023**. In the meantime, the parties to exchange the affidavit / documents, by 09.01.2023.

[RAJESH S. PATIL]
JUDGE