

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10262 OF 2026

Anand Alidas Choithani

... **Petitioner**

Versus

Naresh Hariram Choithani

... **Respondents**

WITH

WRIT PETITION NO. 6548 OF 2026

Naresh Hariram Choithani

... **Petitioner**

Versus

Anand Alidas Choithani

... **Respondent**

Adv. Vikramjit S. Garewal a/w Adv. Sagar Deb, Adv. Anmol Bartaria, Adv. Mohak Bartaria for Petitioner in WP/10262/2026 and for Respondent in WP/6548/2026.

Adv. Pradeep Thorat i/b Adv. B. R. Dalal for Respondent in WP/10262/2026 and for Petitioner in WP/6548/2026.

CORAM : ARUN R. PEDNEKER, J.

DATE : 27 AUGUST, 2026

P.C. :

1. The present Petition No. 10262 of 2026 challenges the order dated 24.03.2026 passed by the Appellate Bench of the Small Causes Court in Revision Application No. 11 of 2026, whereby the Appellate

Bench partly modified the order dated 20.09.2025 passed by the Trial Court and directed the Defendant/Petitioner to deposit an amount of Rs.10,000/- per month for the period from 31 August 2023 to 31 March 2026, i.e. Rs. 3,00,000/-, along with simple interest at the rate of 6% per annum and thereafter at the rate of Rs. 10,000/- per month towards the compensation for occupying the suit premises.

2. In Writ Petition No. 6548 of 2026, the licensor of the suit property has also challenged the impugned order dated 24th March 2026 passed by the Appellate Bench, whereby the Appellate Court reduced the amount of compensation payable, and further declined to permit the Petitioner to withdraw the amount deposited. Both the petitions are, therefore, taken up together.

By the order dated 20.09.2025 passed by the Trial Court, Mumbai, in L.E. Suit No. 146 of 2012, the Court directed the Defendant/Petitioner to deposit arrears of monthly compensation amounting to Rs. 14,41,000/- for the period from January 2012 to August 2023 and Rs. 3,46,500/- for period from September 2023 to September 2025 and thereafter Rs. 16,500/- per month towards compensation.

3. Facts are noted from Writ Petition No. 10262 of 2026 :-

The case of the Petitioner is that the Petitioner's family was originally allotted the suit premises under the Displaced Persons (Compensation and Rehabilitation) Scheme following the Partition of India in 1947. The residential premises bearing Block No. 32, Room No. 1, situated at Mulund Colony, Powai Chowk, Mulund (West), Mumbai – 400082 ("Suit Premises"), were allotted on a tenancy basis to Late Shri Hariram Alidas Choithani. Subsequently, an additional portion was constructed adjoining the original premises to accommodate the expanding family. Disputes have since arisen between the two branches of the family concerning their respective rights and entitlements in relation to the Suit Premises.

4. The learned counsel for the Petitioner submits that the Petitioner has remained in long, continuous and uninterrupted possession of the portion occupied by him for several decades. The Petitioner resides in the original portion of the Suit Premises, while the other branch of the family has been occupying the subsequently constructed portion. He further relies upon municipal records, bills and other documents concerning the Suit Premises, which, according to the Petitioner, stand in the Petitioner's name.

5. Late Shri Hariram Alidas Choithani expired in the year 2000. Thereafter, the Respondent instituted L.E. Suit No. 146 of 2012 before the Small Causes Court at Mumbai under Order XV-A of the Code of Civil Procedure, 1908, seeking, inter alia, eviction of the Petitioner from the Suit Premises contending that the Petitioner was a gratuitous licensee.

6. The trial in L.E. Suit No. 146 of 2012 is stated to be pending. During the pendency of the suit, the Trial Court, by the impugned order dated 20.09.2025, allowed the application at Exhibit 54 and directed the Petitioner to deposit arrears of monthly compensation of Rs. 14,41,000/- for the period from January 2012 to August 2023 and Rs. 3,46,500/- for the period from September 2023 to September 2025 and thereafter Rs. 16,500/- per month as compensation. The Petitioner thereafter preferred Revision Application No. 11 of 2026. By order dated 24.03.2026, the Revisional Court partly allowed the Revision Application and modified the direction concerning the commencement of payment of compensation, directing that such compensation be payable from the date of the application at Exhibit 54, instead of being payable from the date of institution of the suit and modified the interim compensation at the rate of Rs. Rs.10,000/- per month.

7. The Defendant/Petitioner has filed Civil Suit No. 3249 of 2006 against the Plaintiff/Respondent before the City Civil Court in respect of the same subject matter, i.e. the suit premises. In the said suit, the Petitioner's claim is that the father of the Plaintiff, Hariram Alidas Choithani, during his lifetime, had transferred/surrendered his right, title and interest in half portion of the suit property to the Petitioner/Defendant. The relevant issues are framed at Exhibit 'O' are as follows:

1) Whether plaintiff proves that he is owner of half portion of Block No.32, Room No.1, Mulund Colony, Mumbai?

2) Whether defendants prove that suit premises was allotted to Mr. Hariram Aildas Choithani ?

8. The said suit was dismissed by the City Civil Court on merits by judgment and order dated 7 July 2011, against which an First Appeal No. 1784 of 2011 has been filed and is pending for consideration before this Court.

9. In the L.E. Suit No. 146 of 2012, filed for eviction of the Defendant/Petitioner as a gratuitous licensee, the Plaintiff/Respondent filed an application under Order XV-A of the Code of Civil Procedure,

1908 seeking compensation. The Order XV-A of the Code of Civil Procedure reads thus:

ORDER XV-A

Striking off Defence in a suit by a lessor.

(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

10. The Respondent/Plaintiff filed the application claiming compensation of monthly rent as under:

Sr. No.	Period	Per Month License Fees (Rs.)	Total (Rs.)
1	January 2012 to March 2016	8,500/-	4,33,500/-
2	April 2016 to February 2017	10,000/-	1,10,000/-
3	March 2017 to February 2018	11,500/-	1,38,000/-
4	March 2018 to February 2019	13,000/-	1,56,000/-
5	March 2019 to	13,000/-	3,12,000/-

	February 20121		
6	February 2022 to December 2022	14,500/-	1,59,500/-
7	January 2023 to August 2023	16,500/-	1,32,000/-
		Total	14,41,000/-

11. The Respondent/Plaintiff placed on record evidence of similarly placed tenancies in the vicinity. Considering the evidence placed on record, the Trial Court allowed the application at Exhibit No. 54 in L.E. Suit No. 146 of 2012 and directed the Petitioner to pay compensation of Rs.14,41,000/- for the period from January 2012 to August, 2023, along with arrears of monthly compensation of Rs.3,46,500/- for the period from September 2023 to September 2025 and thereafter directed to deposit in Court an amount of Rs.16,500/- per month along with other consequential reliefs.

12. The said order of the Trial Court on the application at Exhibit 54 was challenged before the Appellate Bench of the Small Causes Court by filing a Revision Application. The Appellate Bench upon consideration of the material on record, modified the order passed by the Trial Court and partly allowed the Revision Application. The Appellate Bench directed the Defendant/Petitioner to deposit compensation towards arrears of rent at the rate of Rs.10,000/- per

month for the period from 31 August 2023, to 31 March 2026, i.e. Rs. 3,00,000/- along with simple interest at the rate of 6% per annum. The Appellate Bench further directed the Defendant/Petitioner to deposit an amount of Rs. 10,000/- per month from April 2026 onwards towards the compensation for use and occupation of the suit premises.

13. Learned counsel for the Petitioner submits that both the Courts have failed to appreciate the purpose of Order XV-A of the CPC. He submits that, in the instant case, the title is under dispute and therefore, there could have been no direction to deposit compensation under Order XV-A of the CPC. Order XV-A of the CPC would primarily apply to a relationship between a lessor and the lessee or a licensor and a licensee and not to a gratuitous licensee. The learned counsel also submits that the direction to deposit Rs. 10,000/- per month while the title suit itself is pending would defeat the title suit and would be an onerous upon the Defendant.

14. Per contra, learned counsel appearing for the Respondent submits that the Appellate Bench has, in fact, reduced the compensation, which it ought not to have done, as there was clear material on record to indicate that the Plaintiff was entitled to minimum rental compensation of Rs.16,500/- per month. He also

submits that the suit filed by the Respondent for declaratory reliefs in respect of the suit property has also been dismissed and an appeal has been filed. Learned counsel further submits that Order XV-A is an equitable remedy and that the direction issued by the Trial Court and the Appellate Court on law are correct. He however, submits that the compensation of Rs. 16,500/- per month is inadequate.

15. Having considered the rival submissions, in the instant case, it is a matter of fact that the suit filed by the Defendant/Petitioner seeking declaratory reliefs in respect of the subject matter has been dismissed and that the appeal is pending. The Trial Court has rendered a finding that the alleged transfer by the father of the Plaintiff in favour of the Defendant was without consideration. Prima facie, therefore, the original title of the Plaintiff in the present suit is not under a cloud.

16. Considering this aspect of the matter, the authority of the Court to entertain the present application cannot be doubted. Under Order XV-A, the next issue arises for consideration is “Whether the direction issued to deposit an amount of Rs.10,000/- per month is

appropriate?” In L.E. Suit No. 146 of 2012 filed by the Plaintiff, the amount claimed in prayer clause (b) is as under:

b) The defendant be ordered and decreed to pay to the plaintiff mesne profit at market rate @ Rs.8,500/- p.m. or at such other rate as deems fit and proper by this Hon'ble Court after making an enquiry under order XX, Rule 12 of CPC from 29.12.2011 till the date of judgment and thereafter the defendant be ordered and decreed to pay to the plaintiff mesne profit at such other rate as deem fit and proper by this Hon'ble Court by enquiry under Order XX, Rule 12 of CPC after date of judgment till the defendant quit, vacate and handover vacant and peaceful possession of the suit premises to the Plaintiff.

Considering the prayer clause in the suit, particularly that the Plaintiff has claimed an amount of Rs.8,500/- per month till the date of the judgment, the compensation awarded under Order XV-A beyond Rs.8,500/- amounts to travelling beyond the pleadings. The plaint does not seek compensation at an enhanced rate every year. Thus, the compensation should not exceed Rs.8,500/- per month.

17. The next issue is whether the compensation is payable from the date of the application or from the date of the suit. In this regard, this Court, in the case of ***Shreeprasad R. Jamdar Vs. Shashikalal Prabhakar Nadkarni & Ors.***, in Writ Petition No. 3443 of 2019, has held that compensation can be paid under Order XV-A for occupation of

the premises by a gratuitous licensee after termination of the license. In the case of ***Apsara Development Corporation Vs. Rafique Siddique*** in Writ Petition No. 1038 of 2022, this Court directed the payment of compensation from the date of the application, holding that such compensation is compensatory in nature. Since the relief is in the nature of interim compensation, there is no justification for granting such compensation from the date of filing of the suit.

18. In this regard, the learned counsel for the Respondent pointed out that there was a particular reason why, in the case of ***Shreeprasad R. Jamdar*** (supra) the compensation was not granted from the date of the suit. It was done so since the earlier application was not pressed and therefore, the subsequent application filed under Order XV-A was granted from the date of the application.

19. Considering the declaration of law by this Court in the case of ***Apsara*** (supra), as to the nature of compensation being interim in nature and that it has to be granted from the date of the application, I need not inquire further into this aspect of the matter. This Court is accordingly will apply the law laid down in the case of ***Apsara Development Corporation*** (supra).

20. In the case of ***Kekasha Parveen Varsi Vs. Mrs. Husna Abdul Rashid Qureshi Aka & Ors.*** in Writ Petition No. 8379 of 2025, this Court has considered the object of Order XV-A, which came to be inserted by way of an amendment by the Bombay High Court with effect from 1 October 1983. The object of the said provision appears to be to secure the interest of the landlord, as the continued occupation of the Suit Premises by a lessee or licensee after termination of the lease or license, as the case may be, without payment of rent or license fees, would cause grave prejudice to the landlord. Often, the suits for eviction await adjudication years. A determination of mesne profits after long lapse of time from the termination of tenancy and the institution of the suit for eviction is not a solace for the landlord. This Court, in the case of ***Kekasha Parveen Varsi*** (supra), has discussed the object of Rule 1 Order XV-A and has also dealt with the issue of a gratuitous licensee, where the premises were once occupied under a gratuitous license and thereafter there is termination of the license, the Defendant is liable to pay compensation for the occupation of the premises.

21. This Court in the judgments of ***Shreeprasad R. Jamdar*** (supra) and ***Dr. Nirmala Sohanlal Pandit Vs. Madhu Sudan***

Kumar Mangalore Jarappa in Writ Petition No. 11620 of 2017, has held that the Court would be justified in directing the Defendant, who is stated to be a gratuitous licensee, to pay the interim compensation. This Court held that the suit for eviction of a gratuitous licensee does not appear to be completely out of the purview of the provisions contained in Order XV-A. This Court observed that, it would be contextually relevant to note that Rule (1) of Order XV-A came to be substituted by the Notification dated 11 January, 1990. Inter alia, the expression, "In a suit by a lessor or a licensor against a lessee or licensee as the case may be, came to be substituted for the expression "In a Suit by a lessor for eviction of a lessee". The Rule making authority thus, found it necessary to empower the court to direct a licensee as well to deposit the license fee in a Suit instituted by the licensor for eviction, with or without arrears of license fee. **The term "licensee" covers within its fold a gratuitous licensee.** If the landlord succeeds in demonstrating that the Defendant was a gratuitous licensee that license has been duly terminated and, yet such licensee continues to occupy the subject premises, as a matter of principle, the Court cannot be precluded from directing such licensee to deposit the amount towards license fee as the Court may find appropriate in a given case.

22. However, this Court has further observed that it need not be guided by market rate and the principles laid down in the case of ***Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.***, reported in 2005 (3) BOM CR 274, may not strictly apply. However, the Court needs to be alive to the fact that the Defendant is in the occupation of the subject premises post revocation of the gratuitous license, without paying any premium or fees for the same. Thus, this Court in ***Shreeprasad R. Jamdar*** (supra) was of the view that, although the compensation may not be at the market rate, it has to be sufficient, being conscious that the gratuitous licensee is occupying the premises, and that a reasonable fee for such occupation has to be determined by this Court.

23. Considering the principles of law laid down in various judgments of this Court, this Court would partly modify the order of the Appellate Court by directing the payment of compensation to the extent of Rs. 8,500/- per month from the date of the application.

24. Since I have already held that the Petitioner in Writ Petition No. 6543 of 2026, being prima facie the licensor / owner of the property, would be entitled to withdraw the amount deposited before the Court,

subject to furnishing an undertaking that, in the event any adverse order is passed against him, he shall redeposit the said amount. The entire amount of arrears shall be paid within six weeks, and thereafter, the month-to-month compensation shall be deposited regularly.

25. The Writ Petitions are **partly allowed** and accordingly **disposed of**.

[ARUN R. PEDNEKER, J.]