

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 550 OF 2016
IN
CIVIL REVISION APPLICATION NO. 694 OF 2012

Lorna R. D'Lima wd/o. R. D'lima & Ors. .. Applicants
In the matter between :
Shah J. Lakhamshi wd/o.
Late L. Tegesingh & Ors. .. Petitioners
VS.
Lorna R. D'Lima wd/o. R. D'lima & Ors. .. Respondents

Mr. Rajesh G. Singh i/b. Legal Liasons for Applicants in CA.
Mr. D. J. Lulia for Original Petitioners in CRA.

CORAM : M. S. SONAK, J.
DATE : 10 OCTOBER 2016

P.C. :-

1] By this civil application, the applicant / landlady seeks leave to withdraw the amount of compensation which is being deposited by the tenant in pursuance of the order dated 10 August 2015 as a condition precedent for continuing in the suit premises, despite, there being a decree of eviction in the matter.

2] The applicant points out that by now she is 72 years of age. The suit premises are a tin shed comprising 11 ft. x 11 ft. and are presently being used as a godown by the tenant. If the applicants are to be deprived of the possession of the suit premises, then, the applicants should at least be permitted to withdraw the compensation of Rs.3,500/- per month during the pendency of the

present proceedings. The learned counsel for the applicants points out that in case the decree is ultimately reversed, the applicants will bring back the amount which is so withdrawn. This statement is in fact made on basis of the instructions from the applicant, who is present in the court.

3] Mr. Lulia, learned counsel for the tenant submits that the compensation amount cannot be permitted to be withdrawn. In any case, if withdrawals is to be permitted, the applicants should be directed to furnish adequate security. Learned counsel placed reliance upon the interim order dated 10 December 2010 made in CRA no. 318 of 2010, where, such a course was adopted. Learned counsel however states that he will have no objection to the applicants withdrawing the rent which is Rs.30/- per month unconditionally.

4] Although, ordinarily, the landlord cannot be permitted to withdraw the amount of reasonable compensation which the tenant is directed to deposit as a condition for availing interim reliefs, there is no bar to grant of leave to withdraw in an appropriate case. In this case, the landlady is about 70 years of age. The premises in question, admeasure, 11 ft. x 11 ft. and are said to be used as a godown. Taking into consideration these circumstances, it will be

appropriate if the applicants are permitted to withdraw, in all compensation at the rate of Rs.2,000/- per month. In order to avail the benefit of this order, the applicants should file within a period of four weeks from today, an undertaking to the effect that the amount so withdrawn will abide by the final orders that shall be made at the time of disposal of the CRA. Subject to filing of such undertaking, the applicants are permitted to withdraw, in all Rs.2,000/- per month. The withdrawals to be computed from the date on which the amounts towards compensation have been deposited in this Court by and on behalf of the tenant.

5] It is also necessary to record that Mr. Lulia, learned counsel for the tenant has proceeded to make the submissions on the basis of denials of the averments in the civil application. Accordingly, the circumstance that the tenant has not filed any formal reply opposing the civil application will not be construed as admission of the averments in the civil application by the tenant.

6] This civil application is disposed of in the aforesaid terms.

7] All concerned to act on basis of authenticated copy of this order.