

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.152 OF 2016
IN
CIVIL REVISION APPLICATION NO.451 OF 2013

Mrs.Moti Dinshaw Irani and Anr. .. Applicants

vs.

Babanrao Baburao Pawar and Anr. .. Respondents

Mr.Suresh Dubey for the applicant (plaintiff)

None for the petitioner(defendant)

CORAM : K. K. TATED, J.
DATE : APRIL 5, 2016

P.C.:

- 1 Heard the learned counsel for the applicant.
- 2 Though defendants are duly served no one appeared on behalf of them when the matter is called out. At the request of advocate for respondent, two weeks time was granted on last date i.e. 8.3.2016 to file Affidavit-in-Reply and serve copy on the other side.
- 3 Office note shows that Affidavit-in-Reply is not filed by the petitioner org.defendant.
- 4 This application is preferred by owner of suit property for fixing

interim compensation payable by the tenant in respect of the suit premises i.e. two sheds of temporary nature in the property bearing C.T.S. No.797, Bhavani Peth, Pune, within the Registration Pune, Sub-Dist.Tal.Haveli.

5 The learned counsel for the landlord submits that they filed Civil Suit No.188 of 2000 in the Small Causes Court at Pune for vacant and peaceful possession of the suit property. He submits that the Trial Court dismissed their suit by order dated 20.2.2004. Thereafter the plaintiff landlord preferred the Civil Appeal No.164 of 2004. The Appellate Court by judgment and decree dated 28.3.2013 held that the suit property possessed by the defendant tenant was reasonably and bonafide required to the plaintiff landlords for starting Hotel, Bakery and Computer Academy. The appellate court by judgment and decree dated 28.3.2013 directed defendant to hand over vacant and peaceful possession of the suit property.

6 Being aggrieved by the order passed by the appellate court in Civil Appeal No.164 of 2004 the tenant preferred Civil Revision Application No.451 of 2013. Same was admitted by this court on 13.4.2015.

7 The learned counsel for the applicant landlord submit that the tenant without obtaining any permission from the landlord extended the construction on the suit property. He submits that the tenant carried out construction and extended suit property to 9100 sq.ft. He submits that these facts were recorded by the appellate court in paragraph 6 of

the impugned judgment and decree which reads thus:

“6] The suit has been resisted by the respondents by filing written statement vide Ex.45, wherein, they came with the contention that description of the demised property is factually incorrect as the two sheds to not admeasure 800 and 500 sq.ft. respectfully as contended by the appellants. On the contrary, they came with the contention that the area of the said two demised sheds is of 1080 and 1225 sq.ft. respectfully. Thus, including the area of two sheds, they are in possession of 9100 sq.ft. premises as tenants.”

8 The learned counsel for the applicant submits that even the tenant in his written statement specifically stated that he is in possession of the area admeasuring 9100 sq.ft. Paragraph 2 of the said written statement reads thus :

“2. The description given in paragraph 1-A and B are not true and correct and the same is not admitted by these Defendants. It is surprised to note as to what purpose the Plaintiffs have given two different descriptions in paragraph 1 of the plaint. However, it is true that the Defendants are in possession of two temporary sheds along with an open space, which totally admeasures about 9100 sq.ft. It is submitted that all such particulars given in para 1-A and B and the boundaries shown therein are not admitted by these Defendants. It is also not that one shed on the North-East corner admeasures about 800 Sq.ft. and a shed described in para 1-B admeasures about 500 sq.ft. It is submitted that both the above sheds according to the Defendants admeasures about 1080 sq.ft. and 1225 sq.ft. The Plaintiffs have therefore, given wrong description of the suit premises.”

9 The learned counsel for the applicant landlord submits that as per ready reckoner for the year 2015 market value of the suit premises i.e. area admeasuring 9100 sq.ft. comes to Rs.6,13,57,711.50. He submits that as the landlord, plaintiff is entitled at least interim compensation @ Rs.6,13,577 per month i.e. 10% of the market value of the suit premises. In support of this contention, the learned counsel for the applicant relies on the extract from ready reckoner Exhibit-'E'. He submits that on the basis of the valuation of the suit property as per ready reckoner this Hon'ble Court be pleased to direct tenant to deposit the amount of Rs.5,11,314.26 per month i.e. Rs.61,35,771.15 per year till the hearing and final disposal of the Civil Revision Application.

10 The learned counsel for the applicant landlord submits that if Civil Application is not allowed, irreparable loss and injury will be caused to the applicant because the tenant is using the suit premises just paying Rs.30 per month by way of rent though the decree was passed against him by appellate court on 28.3.2013.

11 I have heard the learned counsel for the applicant at length. I have gone through the copy of judgment and decree passed by the Trial Court dated 20.2.2004 and the appellate court on 28.3.2013 and the Apex Court judgments in the matter of *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt.Ltd., 2005 (1) SCC 705* and *The State of Maharashtra and Anr. vs. Super Max International Pvt.Ltd. and Ors., 2009(9) SCC 772..* The appellate court decreed the applicant landlord's suit on the ground of bonafide requirements. This court by order dated 13.4.2015 admitted the Civil Revision Application and

granted interim relief in terms of prayer clause (d). As the tenant is using the suit premises, some condition to be imposed on him to deposit interim compensation before the Trial Court during the pendency of the present Civil Revision Application.

12 Considering the submission made by the learned counsel for the landlord and the law declared by the Apex Court in the matter of ***Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt.Ltd.***, (Supra) and ***The State of Maharashtra and Anr. vs. Super Max International Pvt.Ltd*** (Supra) and the valuation as per the ready reckoner for the suit premises, I am of the opinion that the tenant to deposit sum of Rs.1,00,000/- per month in Trial Court by way of interim compensation till the hearing and final disposal of the Civil Revision Application from 28.3.2013 i.e. the decree passed by the appellate court. Hence, following order is passed:

- a) Civil Application is partly allowed.
- b) Tenant defendant is directed to deposit monthly compensation of Rs.1,00,000/- in Trial Court from April 2013 till April 2016 within 8 weeks from today.
- c) Tenant defendant is directed to deposit Rs.1,00,000/- per month in Trial Court by way of interim compensation from May 2016 till the hearing and final disposal of Civil Revision Application on or before 10th of each month.
- d) In addition to interim compensation as

stated hereinabove, tenant defendant have to deposit rent in respect of the suit property @ Rs.30 per month on or before 10th of each month in Trial Court.

e) Arrears of rent, if any be cleared within 8 weeks from today.

f) If there is any default on the part of tenant defendant in depositing the interim compensation and rent amount within stipulated time as stated hereinabove, interim protection shall stand vacated without referring back to the court and the applicant tenant is entitled to execute the decree according to law.

g) Applicant landlord is entitled to withdraw rent amount from Trial Court without furnishing any security.

h) Civil application stands disposed off accordingly.

JUDGE