

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

*CIVIL APPLICATION NO.663 OF 2016
IN
CIVIL REVISION APPLICATION NO.752 OF 2014*

Shri Krishnakumar Karsandas Ashar

.. Applicant

Vs

Mr. Archie John Varel & Ors.

.. Respondents

Mr. K. S. Dewal i/b. Roshan Tanna for the Applicant in both the Applications.

Mr. Ram Apte senior Advocate i/b. Ashuthosh Gole for the Respondent.

***CORAM : N.M.Jamdar, J.
Friday 2 December 2016.***

Oral Order :

. By this application the Applicant-original revisional applicant has sought a relief that in view of the subsequent developments whereby the applicant has purchased half share in the suit property and having become 50% co-owner of the suit premises, the order dated 20 July 2015 whereby the statement of the Applicant was recorded that he will deposit an amount of Rs. 50,000/- be suitably modified to Rs. 25,000/-.

2. Heard the learned counsel for the parties. On 20 July 2015, at the time of admission of this Civil Revision Application following order was passed.

1. *The learned Advocate for Applicant, on basis of instructions from the son of the Applicant, who has authority to take decisions in the matter, states that during the pendency of this Civil Revision Application, the Applicant shall pay to the Respondent No.1-landlord compensation at the rate of Rs.50,000/- (Rupees Fifty Thousand Only) per month with effect from 01/02/2015. The first of such payment shall be made on or about 05/08/2015 and payments in respect of the subsequent months shall be made on or before 10th date of each succeeding month. The arrears to be paid on or before 31/08/2015. The learned Counsel for Applicant, on basis of instructions as aforesaid, further states that even if the Applicant succeeds in this Civil Revision Application, the Applicant shall not seek any refund of the compensation of Rs.50,000/- per month which is being paid for use of the suit premises. These statements are accepted as undertakings to the Court.*
2. *Since arguable issues are raised, particularly in the context of eviction from open area, Rule. There shall be adinterim relief in terms of prayer clause (b), subject to payment of Rs.50,000/- (Rupees Fifty Thousand Only), as aforesaid.*
3. *The Applicant is further restrained from carrying out any repairs, renovations or structural changes to the suit premises. If at all there is any occasion for effecting tenantable repairs, the Applicant is granted liberty to apply to this Court.*
4. *Hearing of this Civil Revision Application is expedited.*
5. *Civil Application No.228 of 2015 is disposed of in the aforesaid terms.”*

3. Firstly, According to the learned counsel for the Applicant the statement by the Applicant that Applicant will pay amount of Rs.50,000/- to Respondent No.1 – landlord is incorrect as there were two landlords i.e. Responent Nos. 1 and 2 and it was never contemplated that an amount of Rs.50,000/- will paid to Respondent No. 1 alone. As far as this contention is concerned till date no application is moved for review or modification of the order dated 20 July 2015. Assuming the statement made by the Applicant that Applicant will pay Rs.50,000/- was in respect of both the landlords and the statement the Applicant is to be relieved of his statement to pay Rs.50,000/- only to Respondent No. 1, the matter will then open on merits, and the question will arises as to what should be the equitable arrangement between the parties. For that purpose the premises in possession of the Applicant will have to be considered. The Applicant is in possession of eight shops on the ground floor of the premises in the heart of Thane City. In addition he is in possession of residential premises of two rooms and kitchen having 315 sq.ft. on the ground floor, an open area of 295 sq.ft. and open area of 500 sq.ft. plus terrace admeasuring 1234 sq.ft. These properties are admittedly in the prime area of Thane City.

4. It is the contention of the learned counsel for the Applicant that by a sale deed dated 22 April 2016, the Applicant has purchased half the share in the suit property from the Respondent

No. 2. Even assuming the Applicant is now owner of 50% share of the property and the property is reduced to half, it still consists of four shops, a substantial open area and a open terrace which is stated earlier are in prime locality of Thane. There is no dispute about the locality of the premises. Considering the premises currently in possession of the Applicant, assuming he is owner of the half share, the contention that he is liable to pay only Rs.25,000/- cannot be accepted. Therefore, there is no need to vary the amount of Rs.50,000/- directed to be paid by the order dated 20 July 2015, which is a fair amount of compensation considering the nature of premises, use they are put to and their locations.

5. In the circumstances, no further orders are required to be passed in this Civil Application, which is disposed of.

(N.M.Jamdar, J.)