

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

**CIVIL APPLICATION NO. 91 OF 2016
IN
CIVIL REVISION APPLICATION NO. 942 OF 2010**

Shriram Atmaram Rane & Anr. ... Applicants
V/s.

Sadanand N. Govalkar (since deceased)
1(a) Mr. Sudhir Sadanand Govalkar & Ors. ... Respondents

Mr. D. B. Sawant for the Applicant.
Mr. Vikas Khanolkar for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 21/03/2016**

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by plaintiffs landlords for fixing monthly compensation of suit premises i.e. Room No.5A admeasuring about 100 sq. ft. situated on the ground floor of the building known as Rani Laxmi Niwas, Parmar Guruji Marg, Parel, Mumbai – 400 012 at the rate of Rs.4,100/- per month from February, 2011 till the hearing and final disposal of Civil Revision Application No. 942 of 2010.

3 The learned Counsel for the plaintiffs submits that the plaintiffs filed R.A.E. Suit No. 368 of 2000 in the Court of Small Causes at Bombay for recovery of possession of the suit premises on the ground of reasonable and bonafide requirements of their family members. He submits that after considering the pleadings of both the sides, the Trial

Court framed the following issues :

ISSUES	FINDINGS
1. Whether the suit is maintainable?	Affirmative
2. Whether the Plaintiffs require the suit premises reasonably and bona fide for their own use and occupation of the family members?	Affirmative
3. If yes, who would suffer greater hardship by passing the decree than refusing to pass it?	Answer is in Plaintiff's favour.
3(a). Whether the defendant has acquired alternate suitable accommodation elsewhere, as alleged?	Affirmative
4. Are the Plaintiffs entitle to claim the relief, as prayed for?	Affirmative
5. What order and decree	Suit is decreed.

4 The learned Counsel for the plaintiffs submits that Trial Court in paragraph 19 of the Judgment recorded that deceased Defendant No.1 i.e. husband of the tenant acquired flat in Nalanda Co.op Hsg. Society at Borivali (w), Mumbai. Thereafter, the husband of the tenant sold that flat. Trial Court also recorded in paragraph 19 of the impugned judgment that sons of tenant also acquired flats at different places. Paragraph 19, reads thus:

“19. The issue No.2 is answered in favour of the Plaintiffs. The evidence on record on the other hand goes to show that deceased Defendant No.1 acquired the premises in Nalanda Co. Op. Hsg. Society at Borivali (W), Mumbai. The original Defendant's son also acquired the premises at Flower Vally Co.op. Hsg. Soc. Thane (W) and Mount View Hsg. Soc. Ltd at Panvel, Dist. Raigad. The family of the Defendants No.1 and 2 on the date of the suit consists of themselves and their two sons. The flat at Borivali was sold by the deceased Defendant

No.1. All these facts go to show that no hardship would be caused to the Defendants, if the decree of possession in respect of the suit premises is passed, whereas the Plaintiff would suffer inconvenience and hardship if the decree of possession in respect of suit premises is not passed. The issue No.3 therefore, is answered in favour of the Plaintiffs.”

5 The learned Counsel for the plaintiffs submits that as per valuation report dated 29.12.2011 the monthly market rent comes to Rs.4,100/- at Rs.46/- per sq. ft. He submits that the valuer Sanjay Shrikant Dalvi, who is Government recognized Valuer also relied on leave and license agreement in respect of other premises from the same locality. He submits that as per leave and licence agreement from the said locality market rent comes to Rs.26,300/- to Rs.31,000/- per month. He submits that considering the observations made by the Trial Court in paragraph 19 of the impugned judgment and valuation report dated 29.12.2011 and the law declared by the Apex Court in the matters of *Atmaram Properties Pvt. Ltd V/s. Federal Motors Pvt. Ltd. (2005) 1 SCC 705* and *in the matter of State of Maharashtra & Anr. V/s. Super Max International Pvt. Ltd. and Ors. (2009) 9 Supreme Court Cases 772*, this Hon'ble Court be pleased to direct the tenant original defendant to deposit the sum of Rs.4,100/- per month by way of interim compensation from the date of admission of Civil Revision Application i.e. 19.01.2011 till the hearing and final disposal of the Civil Revision Application.

6 On the other hand, the learned Counsel for the defendant tenant vehemently opposed the present Civil Application. The tenant filed her affidavit-in-reply dated 05.03.2016. The learned Counsel for the

tenant submits that though it is recorded by the Trial Court in paragraph 19 that the tenant's husband acquired the flat at Borivali, but the same was disposed of by him during his lifetime. Today, she has no any other place except the suit premises. He submits that suit premises is situated in chawl without any amenities. He submits that the construction of chawl is of 1942. He submits that even the building in which the suit premises is situated, is not properly maintained. Hence, there should not be any increase in depositing interim compensation in respect of suit premises. He further submits that as of today, the tenant defendant has only source of income is pension of her husband. Therefore, if the interim compensation decided @ Rs.4,100/-, it will be very difficult for her to deposit the same. On the basis of all these submissions, the learned Counsel for the tenant defendant submits that there is no substance in the present Civil Application and same to be dismissed with costs.

7 I heard both the sides at length. It is to be noted that in the present proceeding, there is concurrent findings of facts recorded by both the courts below. The Trial Court in paragraph 19 of the impugned judgment specifically recorded that the deceased husband of tenant acquired and sold the flat. Apart from that, the Trial Court also recorded that tenant's sons have their own independent flats at other places.

8 Considering these facts, valuation report placed on record by the applicant dated 29.12.2011 and averments made in Civil Application, I am of the opinion that tenant defendant has to be directed to deposit

the sum of Rs.2,000/- per month by way of interim compensation from the date of the admission of the present Civil Revision Application i.e. 19.01.2011.

9 Hence, following order is passed:

a) Tenant Applicant in Civil Revision Application is directed to deposit by way of interim compensation in respect of suit premises i.e. Room No. 5A admeasuring 100 sq.ft. situated on the ground floor of the building known as Rani Laxmi Niwas, Parmar Guruji Marg, Parel, Mumbai – 400 012 at the rate of Rs.2,000/- per month from February 2011 till the hearing and final disposal of the Civil Revision Application.

b) The defendant tenant to deposit sum of Rs.2,000/- by way of interim compensation per month in addition to regular rent in the Trial Court on or before 10th of each month from April 2016 till the hearing and final disposal of Civil Revision Application.

c) The arrears from February, 2011 to March 2016 to be deposited in the Trial Court within eight weeks from today.

d) The tenant defendant to deposit the monthly rent of Rs.45/- per month in the Trial Court in addition to the interim compensation on or before 10th of each month till the hearing and final disposal of Civil Revision Application.

e) Liberty granted to the applicant landlord to withdraw the rent amount i.e. Rs.45/- per month, if deposited by the tenant without furnishing any security.

f) If amount is not deposited within stipulated time as stated herein above, interim protection granted in favour of the tenant

defendant shall stands vacated without referring back to the court with liberty to the applicant landlord to take appropriate steps for executing decree.

g) If amount is deposited within stipulated time as stated herein above, the Trial Court is directed to invest the said amount in Fixed deposits of any Nationalised Bank, initially for the period of one year and same to be continued till hearing and final disposal of the Civil Revision Application No. 942 of 2010.

h) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)