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

CIVIL APPLICATION NO.82 OF 2016
IN
CIVIL REVISION APPLICATION NO.350 OF 2007

Jeaneate Fernandes .. Applicant

vs.

Jerome Peter Stevens .. Respondent

Mr.Denzil D'mello i/b Mr.J.D.Fernandes for the applicant

Mr.Omprakash Pandey for the respondent

CORAM : K. K. TATED, J.
DATE : MARCH 22, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 This application is preferred by owner of the suit property seeking direction against the applicant tenant to deposit a sum of Rs.50,000/- per month by way of compensation in addition to monthly rent from 26.9.2006 i.e. the date on which the appellate court passed judgment and decree against the tenant to hand over vacant and peaceful possession to the owner.

3 The tenant is in possession of the suit premises i.e. flat no.44 on the 1st floor situated at Bramanwada, Vile Parle East, Bombay - 99 on monthly tenancy as per tenancy agreement dated 1.7.1969. The applicant owner filed R.A.E. and R. Suit No.548/1481 of 1986 in the court of Small Causes at Bombay for vacant possession of the suit property. That suit was partly allowed rejecting the plaintiffs' prayer for possession of the suit premises.

4 Being aggrieved by the said decree, owner preferred Appeal No.149 of 2001 before the Appellate Bench of Small Causes Court at Bombay. That Appeal was decided by the Appellate Court by judgment and decree dated 26.9.2006 asking the tenant to hand over vacant and peaceful possession of the suit premises to the owner.

5 Being aggrieved by the said judgment and decree passed by the Appellate Bench of the Small Causes Court, the tenant preferred the present Civil Revision Application No.350 of 2007. Civil Revision Application was admitted by this court on 17.7.2007 and granted interim relief in terms of prayer clause (c) which reads thus:

> "Pending the hearing and final disposal of the present Civil Revision Application, this Hon'ble Court may be pleased to restrain the respondent nos.1 to 7, their servants, agents or any other person or persons claiming on their behalf from evicting the petitioner or disturbing he peaceful possession of the petitioner over the suit premises viz. premises on 1st floor, Fernandes House, Bamanwada, Andheri (East), Bombay 400 099."

6 Hence, the applicant landlord preferred the present Civil

Application. The learned counsel for the applicant landlord submits that the tenant is using the suit premises admeasuring near about 1800 sq.ft. which is situated at Andheri East, Mumbai 400 099 which is a posh locality. He submits that at present tenant is paying Rs.192.84 per month by way of rent. He submits that applicant have to pay property tax for six months to the tune of Rs.3018/-. He submits that landlord is paying Rs.353/- for two months towards water charges. He submits that in a locality where the tenanted premises is situated the market rent is more than Rs.40,000 to Rs.50,000 per month. Hence, in the present application, the applicant owner is seeking direction from this court to direct the tenant to deposit interim compensation in respect of the suit premises @ Rs.50,000/- per month. In support of this contention, the learned counsel for the applicant relies on the Leave and Licence Agreement dated 18.2.2014 in respect of Flat No.B-1, Christine Apartments, Opp. Heather Co-op.Hsg.Society, Bamanwada, P.O. Sahar, Andheri (East), Mumbai 400 099. He submits that said Leave and Licence Agreement is for three years effective from 1st March, 2014 to 28th February, 2017 in respect of the flat consisting two Bed room, Hall, Kitchen and one Toilet. He submits that though the flat no.B-1 consists of two Bed rooms, Hall, Kitchen and two Toilet/Bathrooms on the ground floor of the building, the landlord has given on Leave and Licence basis only one Bed room, Hall, Kitchen and one Toilet. He submits that as per the Leave and Licence Agreement, the licence fees is fixed @ Rs.21,000/- per month for the first year, for the second year Rs.23,100/- per month and for the third year Rs.25,410/- per month. He submits that in the case in hand the tenant is occupying 1800 sq.ft that also in a bungalow. Hence, this Hon'ble

Court considering the Leave and Licence agreement dated 18.2.2014, property tax and water charges payable by owner and considering the judgment of the Apex court 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,*** this Hon'ble Court be pleased to direct the tenant to deposit a sum of Rs.50,000/- per month by way of interim compensation till the hearing and final disposal of the Civil Revision Application in addition to regular rent i.e. @ Rs.192.84 per month. He submits that if Civil Application is not allowed, irreparable loss will be caused to the owner.

7 On the other hand, the learned counsel for the original applicant tenant vehemently opposed the present Civil Application. He submits that the tenant is regularly depositing rent in respect of the suit premises @ Rs.192.84. Hence, there is no question of entertaining the present Civil Application directing tenant to deposit interim compensation @ Rs.50,000/- per month. He further submits that the tenant is a Senior Citizen. At present, he does not have any source of income. He is staying along with wife. He further submits that even his wife is not earning anything. Hence, if this court directs tenant to pay compensation @ Rs.50,000/-, it will become impossible for them to comply the said order.

8 The learned counsel for the tenant submits that Leave and Licence Agreement dated 18.2.2014 on which the landlord relied for fixing interim compensation cannot be a comparable instance. He

submits that in that Leave and Licence Agreement, flat no.B-1 is situated in Co-operative Housing Society. Co-operative Housing Society is providing all amenities to the occupants. Those amenities are not provided by the landlord to the tenant. He submits that for last several years, landlord has not carried out any repairs in respect of the suit premises. Hence, there is no question of entertaining the present Civil Application. Hence, same be dismissed with costs.

9 I have heard both the sides. It is to be noted that in the present proceeding, the suit property is situated at Vile Parle which is in posh locality at Mumbai. Apart from that the suit property is in a Bungalow on the 1st floor which is in possession of the tenant. Ground floor is in occupation of the landlord. Tenant is occupying near about 1800 sq.ft. Area. Considering the locality and the Leave and Licence agreement dated 18.2.2014 and the law declared by the Apex Court in the matters 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), I am of the opinion that till the hearing and final disposal of Civil Revision Application, the tenant have to deposit a sum of Rs.20,000/- per month by way of interim compensation in Trial Court. It is made clear that if there is any default in depositing interim compensation, interim protection granted by this court by order dated 17.7.2007 shall stand vacated without referring back to the court. In that case the landlord is entitled to execute the decree according to law. Hence, following order is passed:

a) Civil Application is partly allowed.

b) Tenant (orig.Applicant) is directed to deposit a sum of Rs.20,000/- per month by way of interim compensation in respect of suit property in Trial Court from August 2007 till March 2016. Tenant to deposit arrears of compensation within three months from today.

c) Tenant to deposit monthly compensation @ Rs.20,000/- per month in respect of suit premises from April 2016 on or before 10th of each month in Trial Court.

d) If there is any default in payment of compensation as stated hereinabove, interim protection granted by this court by order dated 17.7.2007 shall stand vacated without referring back to the court. In that case, the landlord will be entitled to execute the decree according to law.

e) If amount is deposited within stipulated time as stated hereinabove Trial Court is directed to invest entire amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the Civil Revision Application.

f) Tenant to deposit in addition to interim compensation regular rent in Trial Court.

g) Landlord is entitled to withdraw rent amount without furnishing any security.

h) Civil Application is disposed of accordingly.

At this stage the learned counsel for the tenant seeks stay of this order. Considering the submissions made by the learned counsel for the tenant, operation of this order is stayed for six weeks. It is made clear that the stay is only in respect of interim compensation as awarded by this court and not in respect of rent amount.

JUDGE