

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

**CIVIL APPLICATION NO. 132 OF 2017
IN
CIVIL REVISION APPLICATION NO. 688 OF 2011**

Shri Hanumant Gopal Deshmukh ...Applicant

IN THE MATTER BETWEEN

Shri Shantaram Sakharam Rangle
(since Deceased) Thru. Lrs ...Applicant
Versus (Org.Defendant)

Shri.Hanumant Gopal Deshmukh ...Respondent
(Org.Plaintiff)

Mr.Chintan Shah i/b Mr.Sandesh Patil for the Applicant.

Mr.Pramod J. Pawar for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 07th AUGUST 2017

P.C.

1. Heard Mr.Chintan Shah, learned Counsel for the Applicant and Mr.Pramod Pawar for the tenant.

2. By this Civil Application the landlord seeks a direction to the tenant who has suffered a decree of eviction, to deposit compensation at the rate of Rs.4,000/- per month as a condition for

continuance in possession despite the eviction decrees.

3. Mr.Shah refers to the valuation reports at pages 12 and 13 and submits that directions be issued for deposit of Rs.4,000/- per month.

4. On the other hand, Mr.Pawar, the learned counsel for the tenant submits that in terms of the decision the Hon'ble Supreme Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. V/s.*¹ the jurisdiction and the power to make such directions for deposit of compensation can only be exercised at the stage of grant or confirmation of the Stay to the execution and the eviction decree but not thereof. Without prejudice, Mr.Pawar submits that the suit premises are in a slum area and bereft of any civic facilities. He submits that the area of the suit premises is hardly 130 sq.ft. He submits that presently, the tenant has been paying rent at the rate of Rs.130/- per month or thereabouts. He submits that even if jurisdiction is assumed, there is no case made out by the landlord seeking a direction for deposit of compensation.

5. Upon due consideration of submissions made by the

1 (2005) 1 SCC 705

learned counsel for the parties and material on record, I am not prepared to accept the contention of Mr.Pawar that this Court ceases to have jurisdiction to make a direction of deposit of compensation, after, interim relief has been granted restraining the execution of the eviction decree. It is settled position in law that there is nothing final as such with regard to interim orders made during the pendency of the proceedings. This is also not a case where the request of deposit of compensation has already been considered and rejected. Accordingly, this application, need not be dismissed on the ground of preliminary objection raised by Mr.Pawar.

6. The valuation reports, really give no details except for setting that the suit premises ad-measuring between 125 to 135 sq.ft. Therefore, taking into consideration the circumstance that the rent of Rs.130/- or thereabouts was fixed in the year 1988 and there is also some material on record to suggest that the same was around Rs.130/- in the year 1998, it will be appropriate if compensation is determined at the rate of Rs.1,500/- per month. Normally, direction for payment of such compensation has to be made from the date of the decree of the Appeal Court. However, considering the circumstances that this application has been made only on 14-01-2017 and further, the suit premises are in a slum area bereft

of any civic facilities, tenant, is directed to deposit compensation at the rate of Rs.1,500/- per month only from January 2017. Such deposit shall be made each month i.e. on or before 05th day of each succeeding month in the Thane Court. Such deposit shall be pre condition for continuing to remain in possession of the suit premises in pursuance of the ad-interim order made by this Court on 11th November 2011 and confirmed on 09th February 2012. In case of any two consecutive defaults or three non- consecutive defaults, interim protection shall stand vacated.

7. The arrears with effect from 01st January 2017 till date may be deposited within a period of two months from today.

8. The Civil Application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)