

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

**CIVIL APPLICATION NO.308 OF 2016
IN
CIVIL REVISION APPLICATION NO.336 OF 2012**

Shri. Sachin Himatlal Mehta

..Applicant

IN THE MATTER BETWEEN

Bank of Maharashtra

..Org. Applicant

Versus

Shri. Himatlal Devchand Mehta

Since deceased

Shri. Jaisukh Himatlal Mehta and others

..Respondents

Shri. Prashant P. Kulkarni for the Applicant.

**Shri. Girish Utangale a/w Shri. Suyash Gadve i/by Utangale & Co.,
for the Org. Applicant/Respondent.**

CORAM : R. M. SAVANT, J.

DATE : 4th APRIL, 2017

PC.

1 The above Civil Application has been filed by the Applicant/
original Respondent No.6 for the relief that the Applicant be permitted to
withdraw the amount of Rs.30,00,000/- alongwith accrued interest
thereon which amount has been deposited by the original Applicant i.e.
Respondent herein without furnishing bank guarantee but on an
undertaking to be filed by the Applicant. By order dated 10.07.2012
passed by a Learned Single Judge of this Court the said amount of
Rs.30,00,000/- was directed to be deposited in this Court. The original

Civil Revision Applicant i.e. the Respondent herein Bank of Maharashtra has accordingly deposited the said sum of Rs.30,00,000/- in this Court. It was provided in the said order that in case the original Civil Revision Applicant deposits the amount of Rs.30,00,000/-, the Respondents amongst whom is the Applicant above named would be at liberty to withdraw the same after furnishing bank guarantee. A further direction was issued that the said bank guarantee will be kept alive till the disposal of the above Civil Revision Application. The above Civil Application has been filed by the Applicant/original Respondent No.6 seeking waiver of the said condition of furnishing bank guarantee on the ground that the Respondents are not in a position to furnish bank guarantee. The amount as indicated above has been deposited by the original Civil Revision Applicant i.e. Bank of Maharashtra and it is with a view to secure the said amount that the condition of furnishing a bank guarantee was incorporated in the said order dated 10.07.2012.

2 In my view, therefore, the relief sought vide prayer clause (a) of the Civil Application cannot be acceded to. In so far as prayer clause (b) is concerned, the original Civil Revision Applicant i.e. Bank of Maharashtra has already handed over possession after the Trial Court had passed the decree. Hence, the original Respondents are in possession of the tenanted premises in question and the only dispute that remains is as

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regards the entitlement for mesne profits after the decree was passed by the Trial Court. In my view, therefore, this is not a case where the above Civil Revision Application can be given precedence over other matters wherein the landlords are awaiting possession of the tenanted premises though the decree is passed in their favour. Hence, no relief can be granted. The Civil Application is accordingly rejected.

[R.M.SAVANT, J]