

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 650 OF 2013

Shri. Ghevarchand G. Bagmar .. Applicant  
vs.  
Fakirchand M. Hiran (Dead)  
since deceased through His  
Legal Heirs .. Respondents

**WITH**

CIVIL REVISION APPLICATION NO. 469 OF 2013  
Shri. Ghevarchand G. Bagmar .. Applicant  
vs.  
Fakirchand M. Hiran (Dead)  
since deceased through His  
Legal Heirs .. Respondents

**WITH**

CIVIL APPLICATION NOS. 377 OF 2015  
IN  
CIVIL REVISION APPLICATION NO. 650 OF 2013

Shri. Ghevarchand G. Bagmar  
(since deceased through His Legal  
Heirs) .. Applicants  
vs.  
Fakirchand M. Hiran (Dead)  
since deceased through His  
Legal Heirs .. Respondents

**WITH**

CIVIL APPLICATION NO. 119 OF 2014  
IN  
CIVIL REVISION APPLICATION NO. 469 OF 2013

Shri. Ghevarchand G. Bagmar  
(since deceased through His Legal  
Heirs) .. Applicants  
vs.  
Fakirchand M. Hiran (Dead)

since deceased through His  
Legal Heirs

.. Respondents

Mr. P.N. Joshi for the Applicant in both matters.

Mr. R.N. Sanghavi for Respondent No.3 in both matters.

**CORAM : M. S. SONAK, J.**

**DATE : 05 OCTOBER 2017.**

**P.C. :-**

1] On 24<sup>th</sup> March 2017, this Court made the following order:

*“The Revision Applications are pending since the year 2013 and they are being adjourned for settlement. The Revision applications simply cannot be kept being adjourned. A proposal is given by the learned counsel for Applicants that the Applicants will hand over the first floor of the suit premises to the Respondents and the Respondents, on a mutually agreed amount should create a fresh tenancy in favour of Applicants in respect of shop on the ground floor.*

*2. The learned counsel for Respondents submitted that though it was agreed to hand over the vacant possession of the first floor no steps have been taken and therefore it is difficult to rely on the stand taken by Applicants. The learned counsel for Applicants had taken time to bring the keys of the first floor and hand over the possession to the Respondent-landlord to show his bonafides. The learned counsel for Applicants has brought the keys of the first floor premises in the Court today and states that he has no objection, if even today the possession of the first floor is taken and the matter is settled as above. The learned counsel for the Respondents submitted that even if the first floor premises are surrendered today, without the consent of all the legal heirs of original landlord a positive commitment cannot be made. He submitted that in view of the handing over keys by Applicants, there may not be any impediment in resolving the dispute as suggested, however, he will have to take consent of all heirs.*

*3. To facilitate speedy resolution of dispute, at the joint request of the the learned counsel, following order is passed -*

*a The Applicants will deposit the keys of the first floor of the suit premises on 29 March 2017, in the registry of the District Court, Nasik which will be kept in safe custody.*

*b The Principal District Judge, Nasik will depute a responsible officer to open the first floor of the suit premises with the keys so deposited and place a new lock in the suit premises in presence of both sides and seal the premises, and keep the key in a safe custody.*

*c The key of the new lock so sealed shall remain in the custody of the District Court, Nasik pending further orders in this Revision application.*

*d If there are any essentials to be removed from the first floor, the Applicants will do so before 29 March 2017.*

*e The Respondent will deposit amount of `1000 in the District Court, Nasik for meeting the expenses.*

4. *Considering the fact that the Court has invested substantial amount of time in this matter, it is expected that the parties will take a positive stand and see that the dispute is resolved as early as possible, failing which the matter will have to be heard on merits.*

5. *The Registry to communicate the order forthwith, in addition by way of e-mail. Liberty to the parties to act on the authenticated copy and furnish the copy of the order to the District Court, Nasik.*

6. *Stand over to 5 April 2017, under the caption 'for directions'."*

2] Today, learned counsel for the respondent-landlord states that no compromise is possible since, there is no consensus amongst all the legal representatives of the deceased landlord.

3] Mr. Joshi, learned counsel for the applicants, submits that the Rent Control Act (Bombay Rent Control Act) contemplates eviction from part of the premises, particularly where eviction is applied for on the ground of *bona fide* requirement of landlord. He submits that the applicants stand by their offer of surrendering the

first floor premises, which ad-measuring 220 sq. ft. He submits that upon receipt of possession of first floor premises, there is no question of making any decree or confirming the decree for eviction from the ground floor premises ad-measuring approximately 80 sq.ft.

4] Mr.Sanghvi, learned counsel for the respondents, submits that the applicants had already purchased five other shops and this is a case where two Courts have concurrently held against the applicants.

5] Taking into consideration the fact that the applicant does not press the civil revision application insofar as the 1<sup>st</sup> floor premises of 220 sq. ft. are concerned, Rule is required to be issued in Civil Revision Application No. 650 of 2013. The impact of surrender of the premises on the first floor is required to be considered in this civil revision application.

6] Accordingly, Rule in Civil Revision Application No. 650 of 2013. There shall be interim relief in terms of prayer clause (b), which is restricted to the suit premises on the ground floor ad-measuring 80 sq.ft or thereabouts. This interim relief shall be subject to the following conditions:

- (a) The applicants to file usual undertaking before the Trial Court within a period of four weeks from today, after service of advance copy to the learned counsel appearing for the respondents; and

(b) The applicants shall deposit and continue to deposit before the Trial Court compensation at the rate of Rs.10,000/- per month with effect from 1<sup>st</sup> February 2013, since, the appeal against the eviction decree came to be dismissed on 29<sup>th</sup> January 2013. The compensation to be paid on or before 5<sup>th</sup> day of each succeeding month. The arrears to be deposited within a period of eight weeks from today.

7] The aforesaid determination of the compensation is in terms of law laid down by the Hon'ble Supreme Court in *Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited*<sup>1</sup> and *State of Maharashtra & anr. Vs. M/s. Super Max International Pvt. Ltd. & Ors.*<sup>2</sup>. In this case, the suit premises though ad-measuring 80 sq. ft are on the ground floor and are used for commercial purposes. Further, the circumstance that the applicants has purchased alternative premises, which, he claims are only godowns at least establishes that the petitioner has means to make such deposit.

8] The Trial Court to order the investment of compensation amount in a suitable National Bank.

9] In case of failure to deposit arrears within the time stipulated, the interim order to stand vacated. Further, in case of two consecutive or three non-consecutive defaults, the interim order to stand vacated without any further reference to the Court.

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1 2005(1) SCC 705

2 2009(5)ALL MR 1001

10] Civil Application No. 377 of 2015 to be taken up along with final hearing of Civil Revision Application No. 650 of 2013.

11] Civil Revision Application No. 469 of 2013 is disposed of as not pressed. Accordingly, the Registrar of District Court, Nashik is directed to hand over the keys of the suit premises on first floor to the respondents after verification of identity.

12] Civil Application No. 119 of 2014 does not survive and the same is also disposed of.

**(M. S. SONAK, J.)**