*Sequeira*

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

***CIVIL APPLICATION NO. 121 OF 2017***
***in***
***R.P.C. (St.) No. 9849 of 2017***
***in***
***CIVIL REVISION APPLICATION NO. 631 OF 2009***

Mr.Donald Ferreira
(Since Deceased)
1.(A) Mrs.Eva Ferreira & ors. .. Applicants / Appellants
*In the matter between*
Mr.Donald Ferreira
(Since Deceased)
1.(A) Mrs.Eva Ferreira & ors. .. Petitioners
*Vs*
Mr.C.S.Chandra
(Since deceased)
Ms.C.S.Vilasini & ors. .. Respondents

Mr.Owen Menezes a/w Mr.Ibrahim Merchant i/b Mr.I.Z.Merchant, for Applicants /Appellants.

Mr.Tejas Hartalkar i/b S.S.Kanetkar, for Respondent Nos.1 to 6.

*CORAM : N.M.JAMDAR, J.*
***Date : September 22, 2017.***

***P.C. :***

Heard learned counsel for the parties. The delay in filing this Review Petition is condoned. The Review Petition is taken up for consideration forthwith.

2. The order sought to be reviewed is dated 2 / 5 December 2016, disposing of the Civil Application whereby the compensation amount was fixed taking note of the law laid down by the Apex Court in the case of *Atma Ram Properties Vs.Federal Motors Pvt. Ltd. - 2005 (1) RCJ 23 SC* and in the case of *State of Maharashtra vs. Super Max International Pvt. Ltd. - AIR 2010 Supreme Court 722*.

3. The learned counsel for the Applicants sought to contend that though the Civil Application was moved for fixing compensation from the date of the decree and by inadvertence in the order dated 2 / 5 December 2016, the compensation has been fixed from the date of filing of the Civil Application. It is contended that the law laid down by the Apex Court is clear that such compensation must be fixed from date of the decree only and from no other date.

4. Firstly, as per law laid down by the Apex Court, an applicant needs to be put to terms if any interim order is to be passed in his favour to balance the equities between the parties. The Apex Court in the case of *Niyas Ahmad Khan Vs Mahmoood Rahmat Ullah Khan and another – (2008) 7 Supreme Court Cases 539,* has held that fixation of compensation also should not be of such a nature that it amounts to confiscation and indirect eviction of a tenant. Ultimately, fixation of compensation is an exercise in equity and guided by well settled principles.

5. After the decree was passed in favour of the Applicant-landlord and an appeal was filed by the tenant in the appellate court, compensation was not fixed and considering these aspects the date for commencement of payment of compensation was fixed from the date of application. If the Applicant is aggrieved by the order dated 2 / 5 December 2016, the Applicant can take the challenge further, as per law.

6. Furthermore, since the Civil Revision Application is pending, for any change in circumstances, the Applicant can always apply to the regular Court for any further orders. Accordingly, Application is disposed of .

*N.M.JAMDAR, J.*