

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

**CIVIL APPLICATION NO.590 OF 2016
IN
CIVIL REVISION APPLICATION NO.277 OF 2014**

Domnic Kohli (deceased) through LRs & Anr. Applicants

In the matter of :

Christopher D/Abero Applicant

versus

Domnic Kohli (deceased) through LRs & Anr. ... Respondents

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- Mr.Clive D'souza for the Applicants/original Respondent Nos.1 & 2.
- Mr.Vaibhav Sugdar i/b. Deepak Lad for the Respondent/original Applicant.

CORAM : R.M.SAVANT, J.

DATE : 20th APRIL, 2017.

P.C. :

1. The above Civil Application has been filed seeking directions that the Civil Revision Applicant be directed to deposit compensation of Rs.15,000/- per month for use and occupation of the suit premises, being house No.46-B Chimbai Road, Bandra (West), Mumbai – 400 050.

2. There is concurrent decree passed in favour of the applicant i.e. the original respondent. The application is founded on the judgment of the Apex Court in *Atma Ram Properties Private*

Limited, versus, Federal Motors Private Limited (2005) 1 SCC 705

and hence the principles which have been settled by the Apex Court in the said judgment while fixing the interim compensation pending the proceeding in the higher Court, would have to be borne in mind while fixing the interim compensation. On behalf of the applicant the report of one Jatin Bhuta & Associates Valuers is sought to be relied upon. The said valuers have sought to determine the fair market rent per sq.ft that the suit premises would fetch by adopting the method of taking into consideration the value of the suit property on the basis of market rate per sq.ft. that is prevalent in the area. The said valuer's report concludes by holding that the market rent of the suit premises would be Rs.17,000/- per month. On behalf of the original Civil Revision Applicant reliance is sought to be placed on two unregistered leave and license agreements purportedly executed in the year 2016. While in one agreement the license fee is mentioned as Rs.12,500/-. In the second agreement license fee is mentioned as Rs.16,000/-.

3. It is claimed that the Civil Revision Applicant is working as a watchman with a private employer. Considering principles laid down in ***Atma Ram Properties Private Limited, versus, Federal Motors Private Limited (2005) 1 SCC 705***, the principles namely

that the interim compensation fixed should not be such as would not be payable by the tenant so as to oust him and at the same time to see that the landlord gets a fair return from the property. Having regard to the fact that the suit premises are admeasuring 144 sq.ft. built up area with Mangalore roof tiles and situated in Bandra (W) it would be just and proper to fix the interim compensation of Rs.10,000/- per month. The said amount would be payable from January 2017 to be deposited in this Court on or before 10th of each month. In so far as amount upto April 2017 is concerned, the same to be deposited within 12 weeks from date.

4. The interim relief granted in terms of prayer clause (b) is confirmed on the said basis. It is made clear that if the arrears are not deposited within the time frame stipulated by the instant order or if the monthly payment is defaulted for any two months then the interim order would stand vacated. In so far as arrears of rent are concerned, the Civil Revision Applicant may deposit the arrears, if any, within 12 weeks from the date.

5. The Civil Application is accordingly disposed of.

(R.M.SAVANT, J.)