

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 382 OF 2017
IN
CIVIL REVISION APPLICATION NO. 319 OF 2017

KR Singh (deceased) through LRs & Ors	...Applicants
<i>Versus</i>	
Eddie Phiroz Bharucha & Ors	...Respondents

Mr Mohan N Dhamal, *for the Applicants.*
Mr JP Sen, Senior Advocate, *with Shivani Khanna & Sahil*
Bijliwala, i/b FZB & Associates, for Respondents Nos. 1, 3 to 6.

CORAM: G.S. PATEL, J
DATED: 10th November 2017

PC:-

1. Heard. The Civil Application seeks a reduction in the amount of monthly compensation ordered by this Court (MS Sonak J) by his order dated 13th September 2017. The premises in question are at Wodehouse Road, Colaba, Mumbai 400 001 and the applicants claim to be in possession of an area of 2,750 sq ft.

2. The order of 13th September 2017 required first an undertaking from the applicants; and second, compensation at the rate of Rs. 1 lakh per month with effect from 1st April 2017 and thereafter a similar amount to be deposited monthly. Even at that

time an argument was made, and which I believe is correct, that premises of this size in this area would today fetch no less than Rs 5 lakhs to Rs 7 lakhs per month. The decision followed were those of the Supreme Court in *Atma Ram Properties (P) Ltd v Federal Motors (P) Ltd*¹ and *State of Maharashtra & Anr v M/s. Super Max International Pvt Ltd & Ors.*²

3. The decisions of the Supreme Court are quite clear and while it is true that regard must be had to all surrounding circumstances, it simply cannot be that premises of this size and in this locality should be allowed to be continuously occupy at some niggardly rate per month as compensation far below anything they would fetch in the market. After all, one must look to the interest and concern of both sides and it simply cannot be that the tenant's inability to pay results in a landlord having to forego reasonable compensation.

4. The only grounds made out in the present application are that the original applicant, KR Singh, his widow and younger son have all passed away. The elder son, Rajkumar is a pensioner and faces an acute financial problem. If that be so he should vacate the premises. He may continue with his Civil Revision Application in the hope of restitution should he finally succeed. What he cannot do is to continue in possession or occupation at some low rate far below anything that the property would fetch. The compensation Mr Justice MS Sonak fixed was in any case well below the market rate.

1 (2005) 1 SCC 705.

2 (2009) 9 SCC 772.

5. There is no cause made out to vary the order. The Civil Application is dismissed. There will be no order as to costs.

(G. S. PATEL, J)