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

WRIT PETITION NO. 13002 OF 2016

Shailesh Ramniklal Ashar and Anr. ... Petitioners.

V/s.

Himmat Chhaganlal Valia and Ors. ... Respondents.

with

CIVIL REVN. APPLICATION NO. 182 OF 2014

Mrs. Indira Ramniklal Ashar and Anr. ... Applicants.

V/s.

Himmat Chhaganlal Valia and Ors. ... Respondents.

with

CIVIL APPLICATION NO. 460 OF 2016

in

CIVIL REVN. APPLICATION NO. 182 OF 2014

Mr. Vijay Mohanlal Ashar alias Bhatia. ... Applicant.

In the matter of

Shailesh Ramniklal Ashar and Anr. ... Petitioners.

V/s.

Himmat Chhaganlal Valia and Ors. ... Respondents.

Mr. Ketan Parekh a/w. Ms. Priyanka Bhanushali for the Petitioner in WP 13002/16 and for the Applicant in CRA 182/14 and CAC 460/16.

Mr. Sunil Chaturvedi i/b. Chiyarajawala for the Respondent.

CORAM : N.M. Jamdar, J.

11 January, 2017.

Oral Order :-

By this Writ Petition, the Petitioners have challenged the order passed by the Appellate Bench of Small Causes Court dated 22 October 2016, whereby the Respondent – tenant is permitted to withdraw the amount deposited by the Respondent – tenant, pursuant to the order dated 5 December 2011. On 5 December 2011 the Appellate Bench had passed an order in Appeal No. 55 of 2011 filed by the Respondent – tenant wherein the Respondent – tenant had sought stay of the execution and operation of the judgment and decree passed in R.A.E. Suit No. 310/762 of 2005 directing the eviction of the Respondent. While granting the interim order, the Appellate Bench directed the Respondent to deposit compensation at the rate of Rs.15,000/- till disposal of the Appeal and further orders of arrears of rent. The Appeal was allowed on 23 December 2013 and the judgment and decree was set aside.

2. The learned Counsel for the Petitioners submitted that as against disposal of the Appeal, the Petitioners had filed a Revision

Application bearing No. 182 of 2014 which is admitted and pending and therefore, the amount deposited before the Appellate Bench by the Respondent be continued till the disposal of the Revision Application filed by the Petitioners. The learned Counsel submitted that in case the Petitioners succeed, it will not be possible for the Petitioners to recover the amount. The learned Counsel submitted that the Apex Court in the case of *Atma Ram Properties (P) Ltd. v/s. Federal Motors (P) Ltd.* reported in (2005) 1 SCC 705 has not laid down any methodology in contingency such as the present one. The learned Counsel for the Respondent on the other hand relied upon the decisions of the Apex Court in the case of *State of Maharashtra & Anr. v/s. M/s. Super Max International Pvt. Ltd. & Ors.* reported in AIR 2010 SC 722 and in the case of *Niyas Ahmad Khan v/s. Mahmood Rahmat Ullah Khan & Anr.* reported in (2008) 7 SCC 539.

3. The basis of the order granting compensation is when a decree is under challenge and the tenancy of a tenant is determined, in such eventuality, the Apex Court in the case of *Atma Ram Properties* indicated that to balance equities, the Court may direct grant of suitable compensation. In the present case since the Respondent has succeeded in the Appeal and the decree is set aside, the Respondent continues to be a lawful tenant of the suit property. The proposition advanced by the learned Counsel for the Petitioners that this issue has not been answered by the Apex Court is not

correct as in the case of Super Max, the Apex Court has clearly indicated that if the tenant's appeal is allowed, then status-quo ante would be restored and the tenant would be entitled to get back all the amount that he was made to pay on the basis of contractual rent. This position being clarified by the Apex Court, the request of the Petitioners that the amount should be continued to be lying in deposit cannot be accepted. As regard the Civil Application No. 460 of 2016 is concerned, in this Application the Applicant has prayed that the Respondent – tenant be directed to pay rent and such other directions sought treating the Respondent as tenant. As far as Civil Revision Application No. 182 of 2014 is concerned, it contains prayers both based on compensation and the rent.

4. In view of the view I have taken in the Writ Petition, the prayers based on grant of compensation will not survive. As far as the prayer by which the Petitioners are seeking directions to the Respondent – tenant to pay arrears of rent are concerned, it is open to the Petitioners to take out a separate application in the pending Revision, which application will be considered on its own merits. The Writ Petition and the Civil Application No. 460 of 2016 are disposed of accordingly.

(N.M. Jamdar, J.)