

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 1374 OF 2017

Smt. Rani K. Jain

.. Petitioner

vs.

Mr. Vishambar K. Mehrotra and anr.

.. Respondents

Mr. Javed A. Khan for the Petitioner.

Mr. Vishal Kanade, Hasmit Trivedi a/w. Ujwala Shetty I/b Vrinda Daga for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 6 DECEMBER 2018.

P.C. :-

1] Heard the learned counsel for the parties.

2] Mr. Javed Khan, the learned counsel for the petitioner, makes it clear that in this petition the petitioner is challenging only the order dated 25th October 2016 made below Exhibit-14 (page No.16 of the paper-book). The learned counsel submits that in terms of the rulings of the Apex Court in *Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited-2005 (1) SCC 705*, the tenant who is seeking to continue in possession on the basis of interim relief from the Appeal Court may only be required to deposit market rent. However, mistakenly, the petitioner paid the market rent to the respondent – landlord. Therefore, by application at Exhibit 14, the petitioner applied for a direction to the landlord to

bring back the amount paid so that the status of such amount could be decided at the stage of final disposal of the appeal. He submits that the Trial Court clearly erred in rejecting the application at Exhibit-14 and therefore, the impugned order warrants interference.

3] Mr. Vishal Kanade, the learned counsel for the respondent, points out that there is no bar in terms of the ruling of the *Atma Ram (supra)* for directions to the tenant to pay the market rent to the landlord during pendency of the appeal, provided, a case to that effect is made out by the landlord. He submits that in the present matter a case was made out, therefore, it was this Court by order dated 3rd May 2012 which directed the payment in favour of the respondent – landlord. He submits that the order dated 3rd May 2012 made by this Court was never challenged, but later the same was complied as it ought to have been. In such circumstances, Mr.Kanade submits that the application at Exhibit-14 was quite misconceived and has been correctly dismissed.

4] On perusing the order dated 3rd May 2012 made by this Court in Civil Application No. 198 of 2012 in Writ Petition No. 3383 of 2010, it is clear that the directions issued by this Court to the

petitioner was for payment of compensation at the rate of Rs.20,000/- per month together with arrears directly in favour of the respondent – landlord. This order stands, in the sense that neither was any review of the same was applied for nor was the same challenged. The record bears out that in fact the petitioner complied with the said order.

5] In the aforesaid circumstances, the learned Trial Court is entirely justified in rejecting the petitioner's application below Exhibit 14. At the highest, clarification can be issued that whatever payments that are made or are to be made by the petitioner to the respondent – landlord will be subject to the final orders that will be made in the appeal.

6] This petition is therefore, disposed of with the aforesaid clarification. There shall be no order as to costs.

(M. S. SONAK, J.)