

psv

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

**CIVIL APPLICATION NO.234 OF 2017
IN
CIVIL REVISION APPLICATION NO.630 OF 2009**

Mr.Rahul I. Kadri & Ors.	...Applicants
In the matter of	
Elof Hansson (India) Ltd.	...Org. Applicant
V/s.	
Mr.Rahul I. Kadri & Ors.	...Applicants

Ms.Prachi A. Tatake for Applicants.
Mr.Shyam Kapadia i/b. M/s.Chitnis & Co. for (org.) Applicant.

CORAM : G.S. KULKARNI, J.

DATE : 19th JANUARY, 2018

P.C.:

By this application, the applicants, who succeeded in the Civil Revision Application in view of this Court dismissing the respondents' Civil Revision Application confirming the eviction decree passed by the Small Causes Court, are making following prayers:-

- “a) By an order/direction of this Hon'ble Court, the Registry be directed to allow/permit the Applicants to withdraw the amount of interest as accumulated in Civil Revision Application No.630 of 2009.
- b) For such other and further reliefs as the nature and circumstances of this case may require and this Hon'ble Court may deem fit and proper, be granted.”

2. By an interim order passed in the Civil Revision Application, this Court had directed the respondents/tenants to deposit an amount of Rs.1,50,000/- p.m. towards compensation in respect of the suit premises with effect from the judgment and decree dated 6th August 2009. An amount of Rs.3 Lakhs was permitted to be withdrawn to enable the applicants to pay the arrears of maintenance to the society. It is stated that the said amount was not withdrawn. This interim order thereafter came to be modified and the deposit of compensation of Rs.1,50,000/- was reduced to an amount of Rs.1 Lakh. It is not in dispute that the respondents/tenants in compliance of the said order, had deposited the amount of compensation in this Court till the Revision Application came to be decided by this Court by judgment dated 10th July 2015 whereby the respondents/tenants' civil revision application was dismissed confirming the possession/eviction decree granted in favour of the applicant as noted above.

3. Respondents approached the Supreme Court challenging the abovesaid judgment of this Court in Special Leave Petition No.22034 of 2015. By an order dated 14th August 2015, the Supreme Court has granted leave on the said Special Leave Petition of the respondents/tenants as also recorded the statement on behalf of the respondents/tenants that respondents/tenants will hand over vacant possession of the premises in question to the applicant, on or before 31st October 2015. As also, that the respondents/tenants will clear all arrears of rent, if any, payable upto 31st October 2015. It is stated that accordingly the possession of the suit premises has already been handed over to the applicants.

4. On the above background, the amount of compensation had remained deposited in this Court. The applicants thus had moved I.A. No.2 of 2016 before the Supreme Court in the Appeal filed by the

respondents/tenants making following prayers:-

- “A) Permit the instant Applicants to withdraw the amount of compensation alongwith the interest accrued thereon, deposited by the instant Appellant/Tenant in terms of order dated 22.08.2012, modified order dated 29.04.2014 and order dated 14.08.2015;
- B) Pass such order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.”

5. The Supreme Court by an order dated 25th July 2016, has allowed the said I.A. of the applicants in the following terms:-

“Heard learned Senior Counsel appearing for the parties and perused the interlocutory application for withdrawal of amount.

Having regard to the fact that the amount deposited by the appellant in the Bombay High Court is by way of compensation and not rent, we are of the view that the applicants-respondents shall be entitled to withdraw the said amount from the High Court only on furnishing an undertaking that they shall return the said amount along with such interest as may be payable, in case the final decision goes against him.

Mr. Shyam Divan, learned Senior Counsel, appearing for the applicants-respondents, states on instructions that the respondents-landlords will not encumber the suit premises financially or sell it till the final disposal of the case.

We, accordingly, direct the applicants-respondents to furnish an undertaking to this effect before the Bombay High Court.

*In view of the above, I.A. No.2/2016 stands allowed.”
(emphasis supplied)*

6. The contention of the applicant is that the Supreme Court in the above order, had already permitted the applicant to withdraw the amount of compensation which was deposited in this Court on furnishing an undertaking that the applicant shall return the said amount with interest as may be payable in case the final decision of the Supreme Court is rendered against the applicant. However, the

contention is that despite the undertaking being furnished, the applicant was not permitted to withdraw the accrued interest and the applicant was permitted to withdraw only the principal amount.

7. From the statement which is annexed as Exhibit 'D' to this application, it is stated that the accrued interest upto April 2017 was about Rs.22,28,794.73 and that further interest has accrued thereafter. The applicant has accordingly, prayed that the applicant be permitted to withdraw the amount of interest as accumulated.

8. Learned Counsel for the respondent/tenant does not dispute the fact of deposit of the compensation amount and interest having accrued on the amounts so deposited. However, his submission is that the prayer of the applicant before the Supreme Court was specific in the I.A. No.2 of 2016 to permit the applicant to withdraw the amount of compensation along with the accrued interest thereon. However, drawing my attention to paragraph 2 of the order dated 25th July 2016 passed by the Supreme Court, it is contended that such a prayer was not granted and what has been permitted by the Supreme Court to be withdrawn by the applicant is only the amount of compensation. It is thus submitted that prayer as made by the applicant cannot be granted.

9. There is much substance in the contention as urged on behalf of the respondents/tenants. A perusal of paragraph 2 of the above order passed by the Supreme Court, in my opinion, cannot be read to mean that the Supreme Court has permitted the applicant to withdraw the accrued interest amount, although the Supreme Court has recorded that the applicant shall furnish an undertaking that the amount which would be withdrawn, along with such interest shall be returned by the applicant in case the final decision in the appeal is rendered against the applicant.

10. In the above circumstances, it would not be possible for this Court to grant the prayer of the applicant to permit the applicant to withdraw the amount of interest as accumulated on the deposit of the compensation amount. It will be appropriate for the applicant to approach the Supreme Court and seek necessary orders in that regard.

11. Civil Application is, accordingly, disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]