

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

**CIVIL APPLICATION (ST.) NO.22378 OF 2018
IN
FIRST APPEAL NO.398 OF 2018**

Hanumant D. Jagdale Prop. Of Swasti
Enterprises .. Applicant

In the matter between

Mahanagar Telephone Nigam Ltd. .. Appellant

V/s.

Hanumant D. Jagdale Prop. Of Swasti
Enterprises .. Respondents

Mr.P.K.Dhakephalkar, Sr.Counsel with Mr.Harshad Bhadbhade i/b
Mr.Anwar Landge for the applicant / respondent no.1

Ms.Dikshita P. Gupte for the appellant

**CORAM: K.K. TATED &
SANDEEP K. SHINDE, JJ.**

DATED : SEPTEMBER 18, 2018

P.C. :

1 Not on board. At the request of Advocate for the Applicant /
original Respondent no.1, matter is taken on board for urgent orders.

2 Heard.

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3 Liberty granted to the advocate for the appellant to carry out correction in their Affidavit-in-Reply dated 16.08.2018 during the course of the day.

4 By this Civil Application, Applicant original plaintiff is seeking to permit them to withdraw the amount deposited by appellant original defendant in Trial Court as per order dated 10.04.2018 passed by this court in Civil Application No.1362 of 2018.

5 The learned Senior Counsel for the Applicant original plaintiff submit that they filed Special Civil Suit No. 120 of 2014 in the court of Civil Judge, Senior Division Thane for recovery of arrears of monthly compensation and service charges, possession and for mesne profit in respect of the suit premises admeasuring 5003.21 sq.ft on the ground and first floor of the premises known as 'Anchor Shop', Ashar Residency, Thane. He submits that the Trial Court decreed their suit by judgment dated 18.12.2017 and directed appellant original defendant to hand over vacant and peaceful possession of the suit premises to them. He submits that Trial Court also directed to original defendants to pay monthly compensation and service charges @ Rs.135 per sq.ft. per month for the period 02.01.2010 to 01.01.2012 with interest @ 10% p.a. and @ 200 per sq.ft. per month for the period 02.01.2012 to 01.02.2014 with interest @ 10% p.a. He submits that as per the order passed by this court, appellant original defendant deposited the amount in Trial Court. He submits that as on today, possession of the suit property is with the defendants only. He submits that Applicant may be permitted to withdraw the said amount without furnishing any

security.

6 On the other hand, the learned counsel for the appellant original defendant vehemently opposed the present Civil Application. She submits that Trial Court has awarded compensation on higher side. They have good chance of success in the present proceedings. Therefore, there is no question of allowing the Applicant to withdraw the said amount.

7 Considering the submissions made by the learned Senior counsel for the Applicant and the averments made in the Application and as on today, suit property is in possession of the appellant original defendant, we are of the opinion that Applicant may be permitted to withdraw the entire amount with accrued interest if any, without furnishing any security, subject to outcome of the First Appeal. Hence, following order is passed:

- a) Applicant is permitted to withdraw the entire amount deposited by the appellant original defendant in Trial Court as per order dated 10.04.2018 in Civil Application No.1362 of 2018 with accrued interest if any, without furnishing any security, subject to the outcome of the First Appeal.
- b) Civil application stands disposed off accordingly.
- c) No order as to costs.

(SANDEEP K. SHINDE, J.)

(K.K. TATED, J.)