

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.477 OF 2017
IN
CIVIL REVISION APPLICATION NO.579 OF 2017

Prabhakar Dattatraya Mahajan and another ... Applicants

In the matter between:

Kamlakar Ganpat Tondwalkar (decd) through his
heirs & LRs Shobha Kamkar Tondwalkar & others ... Applicants
Vs.

Prabhakar Dattatraya Mahajan and another ... Respondents

Mr. Bhushan Walimbe i/b. Ms Preeti B. Walimbe for Applicants.
Mr. Pradeep S. Gole for Respondents.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 23, 2018

P.C. :

Heard Mr. Walimbe, learned Counsel for the applicants and
Mr. Gole, learned Counsel for the respondents at length.

2. This application is taken out by the respondents in C.R.A.,
hereinafter referred to as 'landlords' for permission to withdraw the
amount deposited by the applicants in C.R.A., hereinafter referred to as
'tenants', in this Court in pursuance of the order dated 06.10.2017.

3. After hearing both sides, by order dated 06.10.2017, this Court
admitted C.R.A. by issuing Rule and granted interim relief in terms of
prayer clause (d). Interim relief was granted subject to imposing
conditions.

4. It is common ground between the parties that in pursuance
thereof, tenants are depositing compensation in this Court. The present
application is taken out for permission to withdraw the amount

deposited by the tenants. Mr. Walimbe submitted that Jayant Dattatray Mahajan, applicant No.2 in this Civil Application has given undertaking on behalf of himself and applicant No.1 to the effect that if the applicants in C.R.A. (tenants) finally succeed in the C.R.A., the landlords will return the entire amount along with interest at such rate as also within such period as may be fixed by this Court.

5. Mr. Walimbe relied upon paragraph 80 of ***State of Maharashtra Vs. Super Max International (P) Ltd., (2009) 9 SCC 772*** where the Apex Court observed that in case for some reason, the Court finds it just and expedient that the amount fixed by it should go to the landlord even while the matter is pending, it must be careful to direct payment to the landlord on terms so that in case the final decision goes in favour of the tenant, the payment should be made to him without any undue delay or complications. He submitted that applicant No.1 is aged about 67 years and therefore, this is a fit case for permitting landlords to withdraw the entire amount deposited by the tenants. In any case, landlords may be permitted to withdraw 50% of the amount deposited by the tenants in this Court.

6. On the other hand, Mr. Gole opposes the application. He invited my attention to paragraph 79 of State of Maharashtra (supra) to contend that ordinarily the Court should not direct withdrawal of the amount deposited by the tenants during the pendency of the revision / appeal. The deposited amount along with the accrued interest should only be paid after the final disposal to either side, depending upon the result of the case. In the present case, no exceptional case is made out warranting withdrawal of the amount.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. Paragraphs 79 and 80 of **State of Maharashtra** (*supra*) read thus,

“79. Before concluding the decision one more question needs to be addressed: what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside? In that event, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case.

80. In case for some reason the Court finds it just and expedient that the amount fixed by it should go to the landlord even while the matter is pending, it must be careful to direct payment to the landlord on terms so that in case the final decision goes in favour of the tenant the payment should be made to him without any undue delay or complications.”

8. In the present case, the only ground made out is applicant No.1 is 67 years old. In my opinion, this does not amount to exceptional case for permitting landlords to withdraw either entire amount and / or 50% amount. Hence, Civil Application is rejected reserving liberty to the landlords to apply for fixing early date of hearing. Order accordingly.

CIVIL REVISION APPLICATION NO.579 OF 2017

Call for R & P.

(R. G. KETKAR, J.)