

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.632 OF 2018
IN
CIVIL REVISION APPLICATION NO.841 OF 2014

Deepak Rajaram Chipade ...Applicant
In the matter between
Anmol dresses through chandulal Motilal Shah ...Applicants
and ors.
Versus
Rajaram Anant Chipade and anr. ...Respondents

Mr.Ashok Dhanuka for the applicant.
Mr.Chetan G. Patil for the respondents.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 7th AUGUST 2019.

P.C. :

. This is a Civil Revision Application by the tenant against the concurrent findings of the Courts below. They ruled in the landlord's favour.

2. This Court on 25th April 2017 stayed the impugned judgment and directed the applicant to deposit interim compensation at Rs.20,000/- per month. In fact, the material portion of the order reads:

“6. Having regard to all the aforesaid facts and circumstances, in my view, the interest of justice would be met if the Applicants are directed to pay interim compensation at the rate of Rs.20,000/- per month. It

seems that the contractual rent at the rate of Rs.200/- per month has been paid till March 2018 in advance. The receipt to the said effect has been shown to Shri. Ashok Dhanuka who is appearing for the Respondents alongwith Ms. Ankita Singhania. In my view, it would be just and proper to direct the Applicants to pay the interim compensation at the rate of Rs.20,000/per month from January 2017. The difference on account of the fixation of the interim compensation by the instant order would be deposited in this Court by the Applicants within eight weeks from date. The monthly deposit to be made on or before 10th of each month. *On deposit being made as aforesaid, the Respondents would be at liberty to file an application for withdrawal. The extent of the withdrawal that would be permitted as also the conditions that would be imposed for such withdrawal would be considered by the concerned Court at the relevant time.* The interim order is confirmed on the aforesaid condition. If the arrears are not deposited as directed by the instant order or if there are two consecutive defaults in deposit of the monthly compensation, then the interim order would stand vacated. It is clarified that during the pendency of the above Civil Revision Application, the Applicants would continue to deposit the contractual rent with the Respondents.”

(italics supplied)

3. Now, Landlord filed a civil application. He wants the Court's leave to withdraw the amount which the applicant-tenant has so far deposited.

4. In response to the submission made by the landlord's counsel, the tenant's counsel has insisted that the interim compensation is many times over the actual rent. To be explicit, he submits that the

contractual rent is Rs.200/-, but the interim compensation is Rs.20000/- per month—ten times more. In this context, he has drawn my attention to *State of Maharashtra v. Super Max International (P) Ltd.*¹. He maintains that the Supreme Court under identical circumstances has held that once a tenant required to pay compensation over the contractual rent, the amount should be kept in deposit until the proceedings conclude, lest it should prejudice the tenant on his succeeding in the proceedings.

5. Binding as the proposition is, we may briefly note the case-background. The Government of Maharashtra occupied the sixth floor of a building; it used the building for housing the Office of the Registrar, Cooperative Societies. The Government suffered a decree of ejectment. The decree came to be challenged in a civil revision application. Then, the High Court stayed the execution of the decree subject to the Government's depositing a certain amount every month. That was way above the contractual rent. In that context, *Super Max* has restrained the landlord from withdrawing the amounts. But it is not an absolute restraint.

1 (2009) 9 SCC 772

6. *Super Max* has balanced the competing interests of the landlord and the tenant; it struck a middle, even path. In the penultimate paragraph of the judgment, it has put a question unto itself: what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside? Then, the *Super Max* answered it. Once the tenant succeeds, "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." In that context, it has further observed that "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." But the judicial assertion has not ended there. *Super Max* has gone on to observe:

[i]n 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.

7. The approach advocated above finds its justification in the Supreme Court's earlier judgment, too: *Joginder Pal v. Naval Kishore Beha^l*. Joginer Pal has stressed the need for the *adjudicatory fora* adopting

[A] reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as to take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

8. Under these circumstances, guided by *Super Max*, I hold that the landlord may withdraw the amounts the tenant has so far deposited and continue to withdraw the amounts that may be deposited until the CRA concludes. But the landlord should provide security for his withdrawing the amounts; so if the tenant succeeds in the Civil Revision Application, he will not put to any prejudice. I reckon that balances the competing claims on this issue.

9. As a result, I allow the Civil Application subject to the condition that the landlord may withdraw the amount only after his

providing one independent surety before the Court, indemnifying the tenant. That is, if the tenant succeeds on the culmination of these proceedings, the landlord and the surety, jointly and severally, should repay to the tenant the amounts he had paid in excess of the contractual rent. In the alternative, the Court may, then, instead of enforcing the indemnity, permit the tenant to adjust the excess amounts towards the future rent. That is, he will continue in the leased property without rent until the excess amount is adjusted.

10. That said, as I gather, there are two landlords, but only one applied for the withdrawal. Thus, he is entitled to 50%. So the applicant will provide the surety to that extent and withdraw only 50% of the amounts so far deposited, along with accumulated interest if any.

Civil Application No.682 of 2018 is disposed of.

[DAMA SESHADRI NAIDU, J.]