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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

Dhanappa
I. Koshti

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**CIVIL APPLICATION NO. 343 OF 2018
IN
CIVIL REVISION APPLICATION NO. 98 OF 2015**

Shri Damji Kunverji Bharani (since deceased
deleted) through heirs ...Applicants

In the matter between

SMI Ramani wd/o K. Jagannath Shetty
(deceased since deceased) through heirs ...Petitioners

Vs

Damji Kunverji Bharani (deleted) through
legal heirs ...Respondents.

.....

Ms Rubina Taneja a/w Ms Shama Taneja for the Applicants.
Ms Gauri R. Raghuwanshi for the Petitioners.

.....

**CORAM : B. P. COLABAWALLA, J.
OCTOBER 14, 2019.**

P.C. :

This matter has been placed before me in view of the order
passed by this Court on 11th June, 2019 which reads as under;

- “1. Heard Ms Rubia Taneja, learned Counsel for the applicants/ orig. respondents and Ms Gauri Raghuwanshi, learned Counsel for the opponents/ orig. applicants.
2. Ms Taneja submitted that the original applicants in main C.R.A. are required to pay to the present applicants an amount of Rs.30,000/- per month from the date of the trial Court's decree dated 13.10.2005 and not from the date of the order i.e. 6.6.2017 passed by this Court in C.R.A. No. 98/2015.

3. Ms Raghuwanshi submitted that as per order dated 6.6.2017 the applicants in the main C.R.A. are regularly paying Rs.30,000/- per month to the present applicants herein. Ms Taneja submitted that the applicants in the main C.R.A. are required to pay Rs.30,000/- per month from the date of trial Court's decree i.e. 13.10.2005.
4. In view thereof, liberty is reserved to the applicants in present Civil Application to move the Court which passed the order dated 6.6.2017 for clarification. Order accordingly."

2 As mentioned in the said order, liberty was granted to the applicants in the present Civil Application (C.A.No.343 of 2018) to move the Court which passed the order dated 6th June, 2017 for clarification. In this Civil Application, it is stated that by an order dated 6th June, 2017, the above Civil Revision Application (for short "the CRA") was admitted and interim relief was granted in terms of prayer clause (c) of the CRA subject to the applicants in the CRA (the respondents in the Civil Application) paying a sum of Rs.30,000/- per month to the respondents in the CRA. It was made clear that if there is a single default in payment of this amount, the interim relief granted in terms of prayer clause (c) shall stand vacated.

3 The learned advocate appearing on behalf of the respondent in the CRA (the applicant in the Civil Application) brought to my attention a decision of the Supreme Court in the case of the **State of Maharashtra and Anr. Vs. Super Max International Private Limited and Ors. [(2009) 9 S.C.C. 772]** and more particularly

paragraphs 74 to 76 thereof to contend that the applicants in the CRA ought to have been granted stay of the decree only on them depositing the sum of Rs.30,000/- per month from the date of the decree and which was passed on 13th October, 2005. It is, in these circumstances, that in this Civil Application, the applicants (the respondent in the Civil Revision Application) seeks a direction against the applicants to deposit a sum of Rs.41,87,000/- being the arrears from the date of the decree that is from 13th October, 2005 to 31st May, 2017.

4 On the other hand, the learned advocate appearing on behalf of the applicants in the CRA (respondents in the above Civil Application) has submitted that the order dated 6th June, 2017 is very clear. She submitted that the interim relief was granted subject to the applicants in the CRA paying to the respondents a sum of Rs.30,000/- per month in cash. She submitted that this amount is being paid by the applicants to the respondents from the date of order of the High Court, namely, 6th June, 2017. She submitted that the High Court did not order that the amount be paid from the date of the decree and under the guise of clarification, the respondent cannot now seek the deposit of arrears from 13th October, 2005 to 31st May, 2017. She, therefore, submitted that no clarification whatsoever was

required.

5 I must mention that the learned advocate also submitted that when the original decree of the Trial Court dated 13th October, 2005 was challenged before a Division Bench of the Small Causes Court at Mumbai, the said Division Bench granted an unconditional stay to the Trial Court's decree. She, therefore, submitted that in any event, if any deposit ought to be ordered, the same ought to be from the date of dismissal of the appeal and not from the date of the decree.

6 I have heard both parties. I do not find any merit in the submissions made on behalf of the applicants to the CRA. In the judgment of **Super Max International Pvt. Ltd.** (supra), the Supreme Court in paragraph 74 to 76 have referred to the observations of the Supreme Court in the case of **Atma Ram Properties Pvt. Ltd. Vs. Federal Motors (P) Ltd.** [2005(1) S.C.C. 705]. In **Atma Ram Properties** (supra) the Supreme Court has categorically held that with effect from the date of passing of the decree of eviction, the tenant is liable to pay mesne profits or compensation for the use and occupation of the premises at the same rate at which the landlord would have been able to let out the properties and earned the rent if the tenant had vacated the premises. The landlord is not bound by

the contractual rate of rent effective from the period preceding the date of the decree. The Supreme Court in the case of **Atmaram Properties** (supra) has further held that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum, but on the determination of the proceedings and the decree or order of eviction is passed, having been maintained, the tenancy would stand terminated with effect from the date of decree passed by the lower forum. In case of the premises governed by the Rent Control Legislation, the decree of eviction, on being affirmed, would be determinative of the date of termination of the tenancy and the decree of affirmation passed by the Superior Forum at any subsequent stage or date, would not, by a reference to the doctrine of merger have the effect of postponing the date of determination of tenancy. These observations in the case of **Atma Ram Properties** (supra) have been duly followed by the Supreme Court in the case of **Super Max International Pvt. Ltd.** (supra). The relevant portion of the aforesaid decision of the Supreme Court in the case of **Super Max International Pvt. Ltd.** (supra) reads thus:-

- “74 In *Atma Ram Properties* the Court viewed the issue exactly in the same way (See paragraphs 6, 8 & 9 of the decision). Further, the decision also answers Mr. Lalit's submission that the tenancy did not come to end on the passing of the decree but would continue until the tenant was actually physically evicted from the premises in execution of the decree.
75. In *Atma Ram Properties* the Court framed two issues arising for consideration as follows: (SCC p. 714, para 10)

"10This submission raises the following two issues: (i) in respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and (ii) up to what point of time is the tenant liable to pay rent at the contractual rate and when does he become liable to pay compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent to the landlord?"

76 The Court answered the first issue as follows: (*Atma Ram Properties case*, SCC pp. 716-17, para 16)

"16 We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy."

The second issue was answered as follows: (*Atma Ram Properties case* SCC p. 718, page 19)

"(2) ...With effect from that date (the passing of the decree of eviction), the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree."
(words in parenthesis added) (emphasis supplied)

We are in respectful agreement with the decision of the Court in *Atma Ram Properties*."

7 In view of the clear law laid down by the Supreme Court and considering that the tenancy is deemed to be terminated on the date when the decree was passed, namely, 13th October, 2005, the applicants in the CRA (the defendants before the Trial Court) cannot be allowed to enjoy the property without paying the market rate.

8 In these circumstances, the defendant shall deposit the arrears amounting to Rs.41,87,000/- (the arrears from 13th October, 2005 to 31st May, 2017) in this Court within a period of eight weeks from today failing which the interim relief granted in terms of prayer clause (c) [pursuant to the order dated 6.6.2017] shall stand automatically vacated. Needless to clarify that as per the order dated 6.6.2017 even for the future months, the applicant in the CRA shall continue to pay to the respondent a sum of Rs.30,000/- per month. The above Civil Application is disposed of in the aforesaid terms. No order as to costs.

(B. P. COLABAWALLA, J.)