

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.827 OF 2014**

M/S. FAB FASHIONS	]	Applicant
Vs.		
M/s. Radium Garments Pvt. Ltd.	]	Respondent

**WITH
CIVIL APPLICATION NO.256 OF 2014
IN
CIVIL REVISION APPLICATION NO.827 OF 2014**

M/s. Radium Garments Pvt. Ltd.	]	Applicant
Vs.		
M/S. FAB FASHIONS	]	Respondent

**WITH
CIVIL APPLICATION NO.125 OF 2017
IN
CIVIL REVISION APPLICATION NO.827 OF 2014**

**WITH
CIVIL APPLICATION NO.305 OF 2017**

M/S. FAB FASHIONS	]	Applicant
Vs.		
M/s. Radium Garments Pvt. Ltd.	]	Respondent

**WITH
CIVIL APPLICATION NO.306 OF 2017
IN
CIVIL REVISION APPLICATION NO.827 OF 2014**

M/s. Radium Garments Pvt. Ltd.	]	Applicant
Vs.		
M/S. FAB FASHIONS	]	Respondent

**WITH
REVIEW PETITION NO.15 OF 2017
IN
CIVIL REVISION APPLICATION NO.827 OF 2014**

M/S. FAB FASHIONS	]	Applicant
Vs.		
M/s. Radium Garments Pvt. Ltd.	]	Respondent

**WITH
CIVIL REVISION APPLICATION NO.826 OF 2014**

M/S. FAB FASHIONS	]	Applicant
Vs.		
M/s. Radium Garments Pvt. Ltd.	]	Respondent

**WITH
CIVIL APPLICATION NO.255 OF 2014
IN
CIVIL REVISION APPLICATION NO.826 OF 2014**

M/s. Radium Garments Pvt. Ltd.	]	Applicant
Vs.		
M/S. FAB FASHIONS	]	Respondent

**WITH
CIVIL APPLICATION NO.124 OF 2017
IN
CIVIL REVISION APPLICATION NO.826 OF 2014**

M/S. FAB FASHIONS	]	Applicant
Vs.		
M/s. Radium Garments Pvt. Ltd.	]	Respondent

**WITH
CIVIL APPLICATION NO.304 OF 2017
IN
CIVIL REVISION APPLICATION NO.826 OF 2014**

M/S. FAB FASHIONS	]	Applicant
Vs.		
M/s. Radium Garments Pvt. Ltd.	]	Respondent

**WITH
CIVIL APPLICATION NO.307 OF 2017
IN
CIVIL REVISION APPLICATION NO.826 OF 2014**

M/s. Radium Garments Pvt. Ltd.	]	Applicant
Vs.		
M/S. FAB FASHIONS	]	Respondent

**WITH
REVIEW PETITION NO.14 OF 2017
IN
CIVIL REVISION APPLICATION NO.826 OF 2014**

M/S. FAB FASHIONS	]	Applicant
Vs.		
M/s. Radium Garments Pvt. Ltd.	]	Respondent

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Ms. Smita Modi, Applicant in person.

Mr. Drupad S. Patil for Respondent and Applicant in C.A. No.255 of 2014, C.A. No.256 of 2014, C.A. No.306 of 2017 and C.A. No.307 of 2017.

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CORAM : R.G. KETKAR, J.

DATE: 21st JANUARY, 2019.

P.C:

Heard Ms. Smita Modi, the applicant in person in C.R.A No.826 of 2014 and C.R.A. No.827 of 2014 and in Civil Applications No.125 of 2017, 305 of 2017, Review Petition No.15 of 2017, C.A No.124 of 2017, C.A. No.304 of 2017 and Review Petition No.14 of 2017 and Mr. Patil, learned Counsel for the respondent in C.R.A. No.826 of 2014 and C.R.A. No.827 of 2014 and for applicant in C.A. No.255 of 2014, 256 of 2014, 306 of 2017 and 307 of 2017 at length.

2. Civil Revision Application No.826 of 2014 instituted by the applicant Ms. Smita Modi takes exception to the judgment and decree dated 12th November, 2013 passed by the Appellate Bench of the Court of Small Causes at Mumbai in P. Appeal No.36 of 2011.
3. Civil Revision Application No.827 of 2014 takes exception to the judgment and decree dated 12th November, 2013 passed by the Appellate Bench of the Court of Small Causes at Mumbai in P. Appeal No.37 of 2011.
4. Review Petition No.14 of 2017 is filed seeking review of the order dated 7th August, 2017 passed by this Court (Coram: M.S. Sonak, J.) in C.R.A. No.826 of 2014 with Civil Application No.124 of 2017 in Civil Revision Application No.827 of 2014 and Civil Application No.125 of 2017.
5. Review Petition No.15 of 2017 is filed seeking review of the order dated 7th August, 2017 passed by this Court (Coram: M.S. Sonak, J.) in Civil Revision Application No.826 of 2014 with Civil Application No.124 of 2017 in Civil Revision Application No.827 of 2014 and Civil Application No.125 of 2017.
6. By these orders, this Court fixed compensation @ Rs.25,000/- per month in respect of each Unit and directed the defendant to pay compensation on or before 5th day of each succeeding month. The defendant was directed to deposit arrears with effect from 1st December, 2013 within a period of 4 months. It was made clear that in case of two consecutive defaults or three non-consecutive defaults the interim order shall stand vacated without any further reference to this Court. It is also made clear that the defendant cannot, by merely filing some application for extension, regard that there is some kind of automatic extension granted in her favour.

7. The defendant preferred S.L.P before the Apex Court. The Apex Court declined to interfere with the order and requested this Court to decide C.R.A's expeditiously in accordance with law preferably within a period of one month.

8. In view of the administrative order dated 21st December, 2018 passed by the Hon'ble the Chief Justice as Mr. M.S. Sonak, J. is not available , the Registry has placed the Review Petitions before this Court.

9. By common judgment dated 12th November, 2013, the Appellate Court allowed the appeals preferred by the respondents, M/s. Radium Garments Pvt. Ltd, hereinafter referred to as 'plaintiffs' and quashed and set aside the judgment and decree dated 23rd May, 2011 passed in L.E & C Suit No.454/479 of 2001 and L.E & C Suit No.455/480 of 2001. The suits instituted by the plaintiffs were decreed. The Appellate Court directed the applicant, hereinafter referred to as 'defendant' to deliver possession of Units No.208 and 209 admeasuring 933 square feet and 928 square feet respectively located in Prakash Industrial Premises Co-operative Housing Society (Bharat Industrial Estate) situate at T.J. Road, Sewree, Mumbai – 400 015 (for short 'suit premises') to the plaintiffs. The defendant is also directed to pay society maintenance charges till date to the plaintiffs as per the bills raised by the society, among other directions.

10. On 7th September, 2015, Civil Revision Applications were admitted by issuing Rule. Ad-interim relief in terms of prayer clause (d) was granted by imposing conditions. This Court directed the defendant to deposit Rs.10,000/- per month in respect of each of the suit premises on or before 5th day of each succeeding month. The deposit was to be made with effect from 1st December, 2013. The arrears were to be deposited within a period of three months from

the date of the order. The plaintiffs were given liberty to set out particulars with regard to society maintenance charges and other outgoings in respect of the suit premises. All these aspects were to be considered at the time of confirmation of ad-interim relief.

11. It is not necessary to refer to the various orders passed by this Court from time to time. Suffice it to say that ad-interim order dated 7th September, 2015 was confirmed by this Court on 7th August, 2017. Paragraphs 19 and 20 of that order read thus;

“19. Accordingly, the ad-interim relief restraining eviction is hereby confirmed. Such confirmation shall however be subject to Ms. Modi depositing in this Court reasonable compensation at the rate of Rs.25,000/- per month per gala on or before 05th day of each succeeding month. Such deposit shall have to be made with effect from 01-12-2013. Insofar as the arrears are concerned Ms. Modi is granted four months time to clear the same. However, deposit of reasonable compensation at the rate of Rs.25,000/- per month shall have to commence and first of such deposit shall have to be made on or before 05th September, 2017.

20. It is made clear that in case of two consecutive defaults or three non-consecutive defaults the interim order shall stand vacated without any further reference to this Court. It is also made clear that Ms. Modi cannot, by merely filing some application for extension, regard that there is some kind of automatic extension granted in her favour.

12. The matter was heard on 31st August, 2017. It was noted that the defendant intends to file S.L.P against the order dated 7th August, 2017. At her request, extension of 15 days for depositing the amount was granted. The matter was thereafter heard on 15th September, 2017. Further extension of 15 days for depositing the amount was granted. The defendant preferred S.L.P before the Apex Court challenging the order dated 7th August, 2017. The Apex

Court declined to interfere with the order dated 7th August, 2017 and requested this Court to decide C.R.A's expeditiously in accordance with law preferably within a period of one month. Time granted by the High Court to deposit arrears of compensation was extended by one month while dismissing the S.L.P.

13. Civil Revision Applications along with Civil Applications No.256 of 2014, 125 of 2017, 305 of 2017, 306 of 2017, 255 of 2014, 124 of 2014 and Review Petition No.15 of 2017 were heard by this Court (Coram: G.S. Patel, J.) on 17th November, 2017. This Court again passed a conditional order making it clear that unless full payment made as ordered by Mr. Justice Sonak by his order of 7th August, 2017 within the time that he specified and extended by one month by the Apex Court, i.e, unless the full amount is paid by 8th January, 2018, Civil Revision Applications will stand dismissed and all applications and Petitions filed by the applicant will also stand dismissed. They will not be restored without payment of the entire amount. Paragraph 20 of the order dated 7th August, 2017 was reproduced. In paragraph 8, it is was made clear that any interim protection granted earlier already stood vacated. In paragraph 10, it was clarified that C.R.A's will be dismissed without further reference to the Court upon applicant's failure to comply the order within time frames mentioned earlier.

14. Aggrieved by this order, the defendant preferred S.L.P before the Apex Court. By order dated 8th December, 2017, the Apex Court extended the time granted earlier vide order dated 22nd September, 2017 to deposit the amount by a period of 6 months from 8th December, 2017. The High Court was directed to decide C.R.A's expeditiously in accordance with law. The plaintiffs filed Review Petitions before the Apex Court on the ground that while passing the order dated 8th December, 2017, they were not heard. On 10th April, 2018,

the Apex Court disposed of the plaintiffs' applications on the ground that it did not find any good ground to recall the order dated 8th December, 2017 by which 6 months time was extended for depositing the amount. It was also noted that extended period would be expiring on 7th June, 2018.

15. On 27th April, 2018, Civil Revision Applications along with Civil Applications No.255 of 2014, 124 of 2017, 256 of 2014, 125 of 2017, 305 of 2017, 306 of 2017 and Review Petition No.15 of 2017 were heard. It was noted that in view of the order of the Apex Court, the matters were heard for final hearing on 26th April, 2018 (it should be 20th April, 2018) and 27th April, 2018. Contention of the plaintiffs that the defendant has not paid monthly compensation from August, 2017 apart from depositing arrears of compensation was noted. As per calculation of the plaintiffs, monthly compensation from August, 2017 for both the Units till 27th April, 2018 came to Rs.4,50,000/-. The defendant's contention that the Apex Court had extended time for clearing the arrears of compensation as also extended the time for payment of monthly compensation from August, 2017 was also noted. It was also observed that a perusal of the order passed by the Apex Court indicated that the Apex Court has extended time upto 7th June, 2018 for depositing the arrears of compensation. The Apex Court did not extend the time for depositing the monthly compensation from August, 2017. The defendant, therefore, sought time to obtain clarification from the Apex Court in that regard. The Court was constrained to adjourn the matter as the defendant wanted to obtain clarification from the Apex Court.

16. On 6th June, 2018, the matters were heard. The matters were thereafter heard on 24th August, 2018. In support of the contention that High Court cannot fix arbitrarily interim higher rent while considering the application under Order-XLI, Rule-5 of the Code of Civil Procedure, 1908 (for

short 'C.P.'C), the defendant relied on the decisions in **Niyas Ahmad Khan v. Mahmood Rahmat Ullah Khan and another, (2008) 7 SCC 539** and **Mehmood Rahmat Ullah Khan and another Vs. Niyaz Ahamd Khan, (2011) 14 SCC 672**. It was negated by observing that the defendant is trying to re-open the matter which was already concluded by this Court. At the request of the defendant, hearing of the Applications was deferred till 19th October, 2018. It was further noted that the defendant has neither deposited the arrears of compensation even during the extended period upto 7th June, 2018 nor the monthly compensation from August, 2017 and is occupying the suit premises without paying compensation. It was, therefore, made clear that if before the next date of hearing, the defendant does not obtain suitable orders from the Apex Court, the order dated 17th November, 2017 passed by this Court will take its own effect.

17. The matters were thereafter again heard on 19th October, 2018. The defendant submitted that Petitions seeking review of the order dated 18th May, 2018 passed by the Apex Court are pending. The matters were adjourned to 30th November, 2018. Mr. Patil submitted that on 14th November, 2018, the Apex Court dismissed the Review Petitions by observing that it found no error apparent on the face of the record to warrant recall of order dated 18th May, 2018.

18. Ms. Modi strenuously contended that the Apex Court has directed this Court to decide Civil Revision Applications on merits. Unless and until Civil Revision Applications are heard on merits, interim order cannot be vacated as also C.R.A's cannot be dismissed. She submitted that while considering the Civil Revision Applications on merit, the citations relied by her are required to be considered as also law points raised in these C.R.A's are required to be decided.

19. On the other hand, Mr. Patil submitted that in view of the conditional orders passed by this Court, the Civil Revisions Applications are required to be dismissed as the defendant has persistently committed defaults in complying the orders dated 7th August, 2017 and 17th November, 2017. In fact, it was abundantly made clear that in case, the defendant does not comply the order dated 17th November, 2017 passed by this Court, the said order will take its own effect.

20. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the defendant has not complied the order dated 7th August, 2017 passed by this Court. It is not in dispute that the defendant has also not complied the order dated 17th November, 2017. Apart from not depositing the arrears of compensation, the defendant has also not paid monthly compensation from August, 2017. The defendant is admittedly occupying the suit premises without paying any compensation as also without clearing the arrears of compensation even during the extended period up to 7th June, 2018.

21. Ms. Modi submitted that Rs.11,00,000/- are deposited and out of Rs.11,00,000/-, the plaintiffs have withdrawn Rs.3,00,000/-. As against this, Mr. Patil submitted that the defendant is required to deposit compensation @ Rs.50,000/- per month in respect of two premises from 1st December, 2013. Even if, credit of Rs.11,00,000/-, so deposited, is given to the defendant, still she is in arrears of compensation. She has not deposited arrears of compensation.

22. In view thereof and for the reasons recorded in the orders dated 17th November, 2017, for non compliance of the order dated 7th August, 2017 and 17th November, 2017, rule is discharged in both the Applications. Interim

orders stand vacated. In view of dismissal of C.R.A's, Civil Applications No. 256 of 2014, 125 of 2017, 305 of 2017, 306 of 2017, 255 of 2014, 124 of 2017, 304 of 2017, 307 of 2017, Review Petition No.15 of 2017 and Review Petition No.14 of 2017, do not survive and the same are dismissed.

23. It is made clear that applications for restoration of C.R.A's will be entertained only upon the defendant clearing the entire arrears of compensation as also depositing arrears of monthly compensation from August, 2017.

24. At this stage, Ms. Modi orally applies for stay of this order for a period of 3 months. It is not possible to accede to the request made by the defendant on account of her conduct in committing persistent default in complying the Court's order. Hence, oral application is rejected.

25. All the parties to act upon the authenticated copy of this order.

[R.G. KETKAR, J.]