

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 556 OF 2020
IN
CIVIL REVISION APPLICATION NO. 185 OF 2017**

Prabhakar Shankar Shukla (Died)

Through LR's

1) Arvind s/o Prabhakar Shukla and others ... Applicants

Versus

Jayant Bhanudas Chandratre (Died)

Through LR's and others

... Respondents

....

Mr. S. M. Kulkarni, Advocate for the applicants

Mr. Sanket S. Kulkarni, Advocate for the respondents

....

**WITH
CIVIL APPLICATION NO. 2765 OF 2021
IN
CIVIL REVISION APPLICATION NO. 185 OF 2017**

1) Bharat Jayant Chandratre

Deceased through LR's

1-A) Vijayanti Bharat Chandratre and others ... Applicants

Versus

1) Prabhakar Shankar Shukla

Deceased through Legal Representatives

1-A) Arvind Prabhakar Shukla and others ... Respondents

....

Mr. Sanket S. Kulkarni, advocate for the applicants

Mr. S. M. Kulkarni, Advocate for the respondents

....

CORAM : R. G. AVACHAT, J.

DATED : 25th FEBRUARY, 2021

PER COURT :-

. Heard.

2. Both these applications are decided by this common order, as they are interconnected.

3. It is a dispute between the landlord and the tenant. The revision application has been filed by tenant against the judgment and decree passed by the trial Court and confirmed by the appellate Court, directing the applicants to vacate the suit premises.

4. While admitting the civil revision application, this Court vide order dated 11.01.2018, passed the following order:

“3. There shall be an interim relief restraining respondents from evicting the applicants in pursuance to the impugned orders, subject to the following conditions:

(a) Applicants to file an undertaking in this Court that they will not part with possession or create any third party rights in the suit premises and that they will personally use the premises. That undertaking to be filed within a period of four weeks from today by furnishing advance copy to the learned Counsel for Respondents;

(b) The applicants will deposit, in this Court, within a period of four weeks from today a sum of Rs.50,000/- (Rs. Fifty Thousand) towards compensation/arrears. Upon deposit, the respondents shall be at liberty to withdraw the same by filing an undertaking that such withdrawal shall abide by the final orders in this Civil Revision Application;

(c) The applicants shall, with effect from 31st March, 2018, deposit in this Court, a sum of Rs.15,000/- (Rs. Fifteen Thousand) per month by way of compensation. From out of this amount, respondents shall be at liberty to withdraw a sum of Rs.5000/- (Rs. Five Thousand) per month. This shall be subject to filing an omnibus undertaking that such monthly withdrawals shall abide by final orders in this Civil Revision Application.

4 The determination of compensation/arrears in terms of clause (b) above is only provisional and this shall not preclude respondents from instituting execution proceedings, in case the respondents are of the opinion that they are entitled to further amount in terms of the decree already made. That execution proceedings shall be decided on their own merits and in accordance with law.

5 The determination of Rs.15,000/- towards reasonable compensation is in terms of the decisions of the Hon'ble Supreme Court in the case **State of Maharashtra & another Vs. Super Max International Pvt. Ltd. & others**, (2009) 9 SCC 772; and **Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.**, (2005) 1 SCC 705. This is because the suit premises admeasures around 200 square feet and are said to be used for commercial purpose.

6 In case of any two consecutive or three non consecutive defaults in deposit of compensation at the rate of Rs.15,000/- per month, this interim relief stands vacated without any further reference to this Court. The

Registry to invest the deposited amount in a Nationalised Bank possibly in some recurring deposit at the rate of Rs.10,000/- (Rs. Ten Thousand) per month, since, it is expected that the respondents will withdraw sum of Rs.5000/- (Rs.Five thousand) per month.

7 All contentions of all parties are left open in this regard.”

5. Vide civil application No.556 of 2020, the applicants (respondents in civil revision application) have prayed for permission to withdraw the amount deposited towards compensation.

6. Vide aforesaid order dated 11.01.2018, this Court has already given liberty to withdraw the sum of Rs.50,000/- deposited towards compensation/arrears and sum of Rs.5000/- per month out of Rs.15,000/- deposited per month. As such, there is no question of again granting the applicants liberty to withdraw the amount in terms of clause (b) and (c) of the aforesaid order.

7. Learned Advocate for the respondents/tenants would however submit that the applicant Prashant Shukla has sought for permission to withdraw the amount, while the amount is to be paid all the representatives of the original landlord. According to him, if Prashant Shukla is paid the amount, the other legal representatives

may claim the amount from the respondents/tenants. The apprehension of the learned Advocate appears to be misconceived. It is the Court which would be passing the order regarding payment of money deposited in this Court. The application is accompanied with some documents to indicate that all other legal representatives of original landlord have either authorised Prashant Shukla to withdraw the amount for and on their behalf or have already given up their right, title and interest in the suit property. A passing reference to those documents is required to be made here. First such document is a power of attorney executed by Shri Arvind Shukla in favour of his son Prashant. Then come the power of attorney executed by Anita and Sameer. There is also on record an affidavit of Sou. Vijaya and Shobha, giving up their right, title and interest in the suit property. One more document is on record executed by Sou. Vijaya and Shobha, relinquishing their right, title and interest in the suit property. As such, there is no impediment to grant the application.

8. Civil application No.2765 of 2021 has been filed by the tenants/applicants in the revision application, seeking exemption from complying with condition No.3(c) of the order dated

11.01.2018 for a period of two years. It has also been urged for acknowledging the payment made by the applicant by using online method i.e. Government Receipt Accounting System (GRAS) during the lock-down period. In short, the applicants/tenants claim to have made the payment online. The Registry has, however, not recognised the said payment. Challans have been produced on record in support of the payment having been made online. The Registry of this Court has informed to have not received any payment made by the tenants. It has also been informed that the amount deposited through GRAS, must have been received by the State of Maharashtra. The applicant will have to move the said authority to get back their money. The office of this Court, therefore, cannot acknowledge the receipt of the amount said to have been paid online.

9. As regards exemption for a period of two years from payment of a sum of Rs.15,000/- per month as directed vide condition No.3(c) in order dated 11.01.2018 is concerned, learned Advocate would submit that during pandemic, the shop was closed. The applicants/tenants are facing financial crunch.

10. Learned Advocate for the respondents landlord would, on the other hand, submit that normal life has now been restored. The payment for the pandemic period has already been made.

11. A copy of the instructions issued by the Housing Department of the State of Maharashtra on 17.04.2020, has been produced on record. It has been instructed to all the landlords in general that due to pandemic, the tenants may be unable to pay the rent, regularly. Landlords have therefore been instructed to defer, for at least three months, recovery of the rent. It has further been instructed that no tenants shall be evicted/dispossessed by landlords on the ground of failure to pay rent.

12. This Court is conscious of the pandemic situation. Considering the same, the applicants/tenants are granted exemption for a period of nine months from complying with condition No.3(c) of the order dated 11.01.2018. The said period of nine months to commence from 01.04.2021, onwards. The applicants/tenants shall pay the amount to be paid by them for those nine months, in eighteen equal installments commencing from the 10th month i.e. the first month after moratorium of nine months is over. The said payment shall be made in addition to the regular payment directed

to be made vide order dated 11.01.2018.

13. Both the civil applications are disposed of in terms of the aforesaid order.

[R. G. AVACHAT, J.]

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