

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2845 OF 2021
IN
WRIT PETITION NO.6268 OF 1999

Ajay Shah & Ors. .. Applicants

In the matter between :-

Hirabai Popatlal Parekh (deceased)

through LHRs Jeetendra Popatlal

Shah @ Parekh & Ors. .. Petitioners

Versus

Vimla Bhogilal Shah (since deceased)

through legal heirs .. Respondents

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Ms.Gunjan Shah i/b Mr.K.P.Shah for the Applicants..

Mr.Nachiket V. Khaladkar for the petitioner.

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CORAM: RAVINDRA V. GHUGE, J.
DATED : 04th FEBRUARY, 2022

P.C:-

1. Writ Petition No.6268 of 1999 has already been disposed off by the order dated 31/07/2019. By the said judgment, the petition preferred by the tenant/defendant has been dismissed. The possession of the suit property has been handed over to the landlord. The deposited rent by the tenant in this Court has been permitted to be withdrawn as the landlord was held to be entitled to such rent deposited and, therefore, this Court had granted an unconditional withdrawal to the landlord.

2. By this application, which is actually an application, either for clarification or for addition to paragraphs 37 and 38, the learned Advocate on behalf of the applicants makes a solemn statement that the entire litigation between the landlord and the tenant has been concluded vide the judgment dated 31/07/2019. The tenant approached the Hon'ble Supreme Court in SLP No.23761 of 2019, which was dismissed by order dated 16/10/2019. As such, the litigation has factually come to an end between the parties. The landlord is in complete possession of the property.

3. The reason for preferring this application is that this Court, in the judgment dated 31/07/2019, while upholding the rights of the landlord, has observed in paragraphs 37 and 38 as under :-

“37. At this stage, Ms Shah submits that petitioners have deposited rent in this Court. The respondents may be permitted to withdraw the amount so deposited.

38. In view thereof, the respondents are permitted to withdraw the amount deposited by the petitioners in this Court unconditionally. Order accordingly.”

4. The contention of the learned Advocate for the landlord is that the words ‘withdraw the amount so deposited’ appearing in paragraphs 37 and 38, will have to be read as amounts deposited by the tenant in this Court as well as in the trial Court for the reason that the right of the landlord to occupy the suit property has been upheld as well as the right

to withdraw the rent amount to which the landlord is legitimately entitled to. Merely because the amounts deposited in the trial Court are not mentioned in this order, the applicant/landlord is not allowed to withdraw an amount, which is approximately Rs.30,000/- and odd. The said amount may also have gathered interest.

5. Considering the above, I find that in these peculiar facts and circumstances of the case, no purpose would be served in keeping this application pending so as to serve notices upon the tenants, one amongst whom resides in Baroda. So also, the learned Advocate Shri Nachiket Khaladkar who used to appear for the tenants has submitted today that his power to cause an appearance has extinguished as the entire litigation between the parties has been concluded.

6. In view of the above, this application is allowed.

7. The amount deposited by the tenants in favour of the landlord as rent amount in R.A.E. Suit No.812/5991 of 1967 and Appeal No.289 of 1983, can be withdrawn by the applicants alongwith accrued interest, subject to proper identification through an Advocate.

(RAVINDRA V. GHUGE, J.)