IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 966 OF 2022
IN
CIVIL REVISION APPLICATION NO. 284 OF 2021

The Navjivan Co-operative Housing Society Limited, Mumbai …. Applicant

In the matter between :-
Gangadin s/o. Shri. Ramprasad Gangadin …. Applicant
v/s.
The Navjivan Co-operative Housing Society Limited, Mumbai …. Respondent

WITH
INTERIM APPLICATION NO. 964 OF 2022
IN
CIVIL REVISION APPLICATION NO. 283 OF 2021

The Navjivan Co-operative Housing Society Limited, Mumbai …. Applicant

In the matter between :-
Kamleshkumar Madhav Prasad Kanojiya and ors. …. Applicants
v/s.
The Navjivan Co-operative Housing Society Limited, Mumbai …. Respondent

Mr. Rajesh Jain a/w. Mr. Rohit Jain and Ms. Neha Doshi i/b. Legal Juris for the Applicant in IA/966/2022 and IA/964/2022.
Mr. Rajesh Parab for the Applicant in CRA/283/2021 and CRA/284/2021.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 22nd AUGUST, 2023.

P. C. :-

. The revisionists, hereinafter referred to as the tenants have challenged the eviction decree in eviction proceedings filed by the

Applicant – Navjivan Co-operative Housing Society, hereinafter referred to as the landlord. By order dated 14/12/2021, this Court admitted the revision applications with further direction to the tenants to clear the entire arrears of contractual rent within three months and to continue to deposit contractual rent in the Small Causes Court, Bombay on or before 10th day of every month. The landlord was granted liberty to file an application for enhancement of compensation as per the law enunciated by the Apex Court in the case of ***Atma Ram Properties (P) Ltd. v/s. Federal Motors (P) Ltd. (2005) 1 SCC 705***. Pursuant to the said order, the landlord has filed these applications for enhancement of compensation. Relying upon the Valuation Report, the landlord has claimed compensation of Rs.93100/- per month from the date of termination of tenancy.

2. The tenants have claimed that their tenancy rights have been confirmed by judgment and decree dated 09/08/1999. They have stated that the subject premises, wherein they are conducting laundry business, are bamboo sheds along the compound wall and has no water supply and electricity connection. It is stated that the quantum of compensation claimed by the landlord is exorbitant and without any basis. The tenants have also relied upon a Valuation Report of Pradeep

Kushawar and Associates wherein the valuer has assessed the rent of premises admeasuring 190 sq. feet at Rs.3,499/- per month.

3. Heard learned counsel for the Applicants and learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The tenants herein have suffered an eviction decree, which has been stayed by this Court. In terms of the decision of the Apex Court in ***Atma Ram Properties*** (supra), from the date of decree of eviction, the tenants are liable to pay compensation for use and occupation of the premises. In ***Sumit Corporation v/s. Vijay Anant Gangan and ors. In Civil Appeal No.7774 of 2022,*** the Apex Court after considering the decision in ***Atma Ram Properties*** (supra) as well as ***State of Maharashtra and anr. v/s. Super Max International Private Limited and ors. (2009) 9 SCC 772,*** has reiterated that the compensation should not be excessive, fanciful or punitive amount. It is held that while staying the eviction decree, the Court can direct the tenant to pay the compensation for use and occupation of the tenancy premises upon the contractual rate of rent and such compensation for use and occupation of the premises would be 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.

5. In the instant case, the application does not specify the basis on which the landlord has claimed compensation of Rs.93,100/- per month. The landlord produced a Valuation Report along with the affidavit-in-rejoinder wherein the valuer has assessed the compensation at Rs.82,393/- per month on the basis of market rental and fair investment theory. The valuer has considered ready reckoner rates from 2017 to 2021 and has also considered the rental/leave license fees in respect of shops in the vicinity.

6. It is pertinent to note that the subject premises are not shops with all amenities. These are weather sheds along the rear compound wall, covered with plastic sheets and supported vertically by bamboos and are used by the tenants for ironing clothes. The said sheds do not have basic amenities including electricity and water supply and cannot be compared to commercial shops with modern amenities. Hence, the basis adopted by the valuer in determining the monthly compensation, which is otherwise excessive and fanciful, cannot be accepted.

7. It may be mentioned that at this stage the Court is not required to conduct a detailed inquiry or a mini trial but is required to ascertain

the interim compensation taking into consideration the approximate rate of rent that the landlord would have earned had the tenant vacated the premises. The valuer engaged by the tenants has considered the nature of the structure and on the basis of the comparative method, determined the compensation at Rs.3,499/- in respect of premises admeasuring 190 sq. feet. Relying upon the said report and considering the nature of the premises as well as the nature of business conducted by the tenants, the interim compensation in respect of premises admeasuring 190 sq. feet is fixed at Rs.3,500/- per month whereas the compensation in respect of premises in respect of 465 sq. feet is fixed at Rs.8,000/- per month.

8. Hence, the Applications are partly allowed. The Applicants are directed to deposit compensation of Rs.3,500/- per month in respect of premises admeasuring 190 sq. feet and Rs.8,000/- in respect of premises admeasuring 465 sq. feet from the date of this order till final disposal of the Revision Applications.

9. Interim Applications stand disposed of.

10. CRAs to be listed on **30/10/2023**.

(SMT. ANUJA PRABHUDESSAI, J.)