

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3475 OF 2023

Shrikant Murlidhar Sharma ...Petitioner

V/s.

Pranshankar B. Rajguru & Ors. ...Respondents

Ms. Shweta Sharma for Petitioner.

Mr. Gulabsingh S. Yadav for Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.

DATE: 20th APRIL 2023

P.C.:

1. Heard Ms. Shweta Sharma, learned Counsel appearing for the Petitioner and Mr. Gulabsingh Yadav, learned Counsel appearing for Respondent No.1.

2. The Petitioner i.e. original Plaintiff No. 4 is challenging the legality and validity of the order dated 13th September 2022 passed by the learned Appellate Bench of Small Causes Court at Bandra, Mumbai in Marji Application No.13 of 2022 in Appeal No.53 of 2011, by which the Marji Application was allowed and Accounts Department/Nazir of Small Causes Court was directed to pay Rs.3,56,424/- alongwith interest to the Defendants.

3. The factual position on record shows that the learned Trial court decreed the suit bearing R.A.E. Suit No. 24 of 2040 by the judgment and decree dated 6th May 2011. The said decree was challenged by the Respondent by filing (A-1) Appeal No. 53 of 2011.

4. The learned Appellate Court by judgment and decree dated 20th October 2021 set aside the judgment and decree passed by the learned Trial Court and remanded back the matter to the learned Trial Court for re-hearing from the stage of argument and by directing that the said Suit bearing R.A.E. Suit No. 24 of 2004 be decided by taking into consideration the cross-examination of PW-1, Kamlakant Murlidhar Sharma recorded in R.A.E. Suit No. 23 of 2004.

5. As the decree of eviction was set aside and the suit was remanded back, the application was filed in that Appeal to withdraw the amount deposited in the Appeal and the said application was allowed.

6. It is the contention of Mr. Sharma, learned Counsel appearing for the Petitioner that after the remand also, now by judgment and decree dated 17th December 2022, the said suit has been decreed and therefore the Respondent No.1 be directed to re-deposit the said amount. She further submits that the Respondent No.1 has filed an appeal challenging the said

decree dated 17th December 2022 and ex parte order of stay has been passed.

7. It is undisputed position that Rs.2,000/- per month was directed to be deposited in Appeal No. 53 of 2011, which was filed challenging the judgment and decree dated 6th May 2011 passed in R.A.E. Suit No. 24 of 2004. Accordingly the aggregate amount of Rs.3,56,424/- was deposited. It is also undisputed position that said decree dated 6th May 2011 was set aside by the Appellate Court by judgment and decree dated 20th October 2022. The said amount of Rs.2,000/- was directed to be deposited in terms of the judgment passed by **Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.**¹ and the said order has been passed by exercising power under Order 41, Rule 5 of Code of Civil Procedure, 1908 i.e. the condition imposed while staying execution of judgment and decree dated 6th May 2011. As the said decree was set aside by the Appellate Court by judgment dated 20th October 2021, there is no illegality or irregularity in passing order 13th September 2022 directing refund of said amount. Therefore, no substance in the present petition. The Writ Petition is dismissed, however, with no order as to costs.

1. (2005) 1 Supreme Court Cases 705.

8. It is clarified that as far as the new appeal, which has been filed by Respondent No. 1 challenging the judgment and decree dated 17th December 2022 passed in R.A.E. Suit No. 24 of 2004, the learned Appellate Court is required to pass fresh order in terms of the judgment of the Supreme Court in **Atma Ram Properties** (supra). All contentions in that behalf are kept open.

9. Subject to above clarification, the Writ Petition is dismissed, however, with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2023.04.21
19:15:56 +0530