

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

**INTERIM APPLICATION NO.13450 OF 2023
IN
WRIT PETITION NO.3356 OF 2023**

Parmy Manufactory Pvt Ltd. And Anr	...Applicants
V/s.	
Hrishikesh Co-Operative Housing Society Ltd.	...Respondent

Mr. Mukesh Vashi i/b. P. Y. Shankar a/w. Sandhya Yadav for the
Applicant in IA/13450/2023 in WP/3356/2023.

Mr. Rajesh A. Revankar i/b. A. G. Revankar & Co., for the
Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 25th SEPTEMBER, 2023

P.C.:

INTERIM APPLICATION NO.13450 OF 2023

1. This Application is filed by the Original Lessee in a disposed of Writ Petition.
2. By this Interim Application a prayer is made for modification of order dated 28 April, 2023 in the following manner, a direction that the Applicants only deposit Rs.2,07,000/- per month as a monthly compensation on 25 of every month commencing from June, 2023, during the pendency of the Appeal before the Appellate Bench of Small Causes Court. And further

prayer that the deposit of arrears as stated in paragraph No.2 (1) of the order dated 28 April, 2023, be kept in abeyance subject to the out come of the SLP No.24031 OF 2017 and SLP No.27412 of 2017.

3. The Writ Petition was filed by the Applicants/Original Lessee, challenging an order passed by the Appellate bench of Small Causes Court. The Writ Petition was disposed by an order dated 28 April, 2023, the said order reads as under :

1. This Writ Petition was argued on earlier dates. Since the impugned order is an interim order operating during the pendency of the Appeal, the parties arrived at an arrangement which will operate during the pendency of the Appeal. Accordingly, both the parties tender minutes of order.

2. Mr. Rajiv Chavan, learned Senior Counsel appearing for the Petitioners and Mr. Rajesh Revankar, learned counsel appearing for the Respondent state that the said Minutes of Order record the arrangement between the parties which will operate during the pendency of the Appeal before the Appellate Bench of Small Causes Court, Mumbai. Said Minutes of Order are signed by the respective Advocates for identification. The said Minutes of Order are taken on record and marked 'X' for identification. The said Minutes of Order read as under:-

"MINUTES OF ORDER

The Order dated 10.1.2023 passed by the Division Bench of Small Causes Court in Exhibit "6" in P. Appeal No.125 of 2019 stands modified to the following extent:

1. Application being Exhibit "6" is allowed by invoking order 41 Rule 5 of Civil Procedure Code, 1908, execution of Decree to the extent of possession is stayed till the decision of this Appeal on condition of Defendants depositing Rs.2,07,000/- per month (Rupees Two lacs, Seven Thousand only) as Interim Compensation from 24.10.2018 to 30.4.2023 to be deposited in six equal installments within a period of 6 months from the date of this order.

2. Defendants are further directed to continue to deposit Interim monthly compensation at the rate of Rs.2,07,000/- (Rupees Two lacs, Seven Thousand only) in the Court from 1.5.2023 onwards pending the hearing and final disposal of Appeal on or before the 10th of every month.

3. The issue regarding Interim Compensation payable by

Defendant from 12.8.2012 (i.e. from the date of termination of Lease) till 24.10.2018 is kept in abeyance, without prejudice to the rights and contentions of Respondents, subject to the outcome of Special Leave to Appeal No.27412 of 2017 pending before the Apex Court in Mujibur rehman Haji Israr Alam Siddiqui Vs. M/s. K.T.Kubal & Co., with liberty to the Respondents to make necessary application before Appeal Court.

4. The Appeal is to be heard expeditiously and in any case to be finally decided on or before 31.12.2023.

5. The Registrar of Small Causes Court at Mumbai is hereby directed to invest

the amount of compensation as and when deposited by the Appellants in the Court in the Fixed Deposit in any Nationalized Bank immediately on the very next working day in accordance with law. Period of fixed deposit shall be renewed yearly, if required.

6. The amount so deposited shall be subject to final outcome of appeal.

7. On failure to deposit amount as stated above on any three consecutive defaults in installments, stay shall stand vacated automatically.

Dated this 28th day of April, 2023. ”

3. Writ Petition is disposed of in terms of Minutes of Order. Thus, the impugned order dated 10th January 2023 passed by the learned Appellate Bench of Small Causes Court below Exh.6 in P. Appeal No.125 of 2019 in T.E. & R. Suit No.01/01 of 2023 stands modified in terms of the Minutes of Order.

4. The learned Appellate Court is requested to dispose of the said

Appeal No.125 of 2019 expeditiously and preferably on or before 31st December 2023.

5. Writ Petition is disposed of in above terms with no order as to costs.”

4. The Writ Petition was accordingly disposed of pursuant to minutes of order recorded in the Court of Small Causes by the Appellate Bench. By the said minutes of the order the Applicants/Original Defendants a suppose to deposit a sum of Rs.2,07,000/- per month as Interim Compensation from 24 October, 2018 to 30 April, 2023 to be deposited in six equal installments within a period of six months from the date of the order. And further to deposit of Rs.2,07,000/- per month from 1 May, 2023 till the disposal of the Appeal. The issue regarding Interim Compensation whether payable from the termination of lease or from the date of the decree, was kept in abeyance since the issue is pending before the Supreme Court, in the matter of Mujibur Rehaman Haji Israr Alam Siddiqui v/s. M/s. K. T. Kubal & Co., the hearing of the Appeal was expedited and the Appeal was to be disposed of before 31 December, 2023. On the failure of three consecutive default in installments, the stay was to be automatically vacated.

5. Admittedly, only one installment for the month of May, 2023 of Rs.2,07,000/- is paid. The arrears from the date of the decree till April, 2023 has not been paid. The Applicant is now seeking to deposit monthly compensation June, 2023, without depositing the arrears from the date of Decree, i.e., 24 October, 2018.

6. In my view, no case has made out by the Applicant, to entertain the present Interim Application, as the issue pending before the Supreme Court, is covering only paragraph No.3 of the Minutes of Order dated 28 April, 2023. There is no explanation given by the Applicant for non payment of Interim Compensation as per paragraph No.1, of the Minutes of Order. .

7. Therefore, the Interim Application stands dismissed.

(RAJESH S. PATIL, J.)