

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

WRIT PETITION NO. 15459 OF 2022

Forbes Gokak Ltd. and ors.

.... Petitioners

v/s.

Ramaben Laljibhai Kapadia (since
deceased through legal heirs) :

Jagdish Laljibhai Kapadia and ors.

.... Respondents

WITH

WRIT PETITION NO. 13584 OF 2022

Ramaben Laljibhai Kapadia (since
deceased through legal heirs) :

Jagdish Laljibhai Kapadia and ors.

.... Petitioners

v/s.

Forbes Gokak Ltd. and ors.

.... Respondents

Mr. Rajendra Thakkar a/w. Ms. Pooaj Thakkar for the Petitioners
in WP/15459/2022.

Mr. K.M. Sangani for the Petitioner in WP/13584/2022 and
for the Respondent in WP/15459/2022.

Mr. Vijay Nene for Respondent No.5 in WP/15459/2022 and
for Respondent No.4 in WP/13584/2022.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th OCTOBER, 2023.

P. C. :-

. There is a typographical error in order dated 09/10/2023 wherein the in the second line of first paragraph the words “has undertook to file reply” have been typed instead of “had undertaken to

file the reply”. Necessary corrections be carried out in order dated 09/10/2023.

2. These Petitions under Article 227 of the Constitution of India are filed by the landlord as well as the tenants (hereinafter referred to as the Petitioners and the Respondents respectively) challenging the order dated 14/10/2022 passed by the Appellate Bench of the Small Causes Court in Appeal No.209/2021 (Exhibit – 6). By the impugned order, the Appellate Court while staying the execution of the eviction decree, directed the tenants to pay interim compensation of Rs.2,00,000/- per month from the date of the decree till final disposal of the appeal.

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

4. The Petitioners are the owners of the building Lyndewode situated at Bomanji Petit Road, Cumbala Hill, Mumbai. The flat no.5 admeasuring 3200 sq. ft. with a garage situated on the 2nd floor of Lyndewode House was let out to the Respondent No.5. It appears that there is a dispute between Respondent No.5 and Respondent Nos.1 to 4

herein. The Respondent No.5 claims that Respondent Nos.1 to 4 have trespassed in the property whereas it is the case of the Respondent Nos.1 to 4 that they are the sub-tenants. It is stated that proceedings under section 145 of Cr.P.C. were initiated against Respondent Nos.1 to 4 and in Special Criminal Petition No.151/1980, this court with consent, appointed a Court Receiver in respect of the suit flat. Pursuant to the consent terms and the order passed thereon, the Respondent Nos.1 to 4 are in possession of the premises as the agents of the Court Receiver.

5. In the year 1989, the Petitioners filed eviction proceedings against Respondent Nos.1 to 5 on several grounds. The said suit was decreed by the judgment and decree dated 18/08/2021 in T.E.&R Suit No.23/2003. Being aggrieved by the said judgment, the Respondent Nos. 1 to 4 filed an Appeal before the Appellate Bench of the Small Causes Court with an application under Order 41 Rule 5 of the Code of Civil Procedure. By order dated 14/10/2022, the Appellate Bench stayed execution and implementation of the impugned judgment subject to the Respondent Nos.1 to 4 depositing interim compensation of Rs.2,00,000/- per month from the date of the decree. Being aggrieved by the quantum of interim compensation determined by the

Appellate Court, the Petitioners as well as the Respondents have filed these petitions under Article 227 of the Constitution of India.

6. The records reveal that the Petitioners herein had placed before the Appellate Bench the leave and license agreement in respect of flat no.6 admeasuring 3200 sq. feet situated on the 2nd floor of the same building i.e., Lyndewode House. A perusal of the said agreement reveals that the license fees in respect of the adjoining flat was fixed at Rs.7,00,000/- per month in addition to Rs.22,50,000/- towards security deposit. The learned Judge did not rely upon the said agreement in view of the absence of the valuation report of the architect and fixed the interim compensation at Rs.2,00,000/- per month and held that the compensation of Rs.2,00,000/- per month would be just and proper.

7. It may be mentioned that in the recent decision in ***Sumer Corporation v/s. Vijay Anant Gangan and ors. 2022(6) ALL MR 795 (S.C.)***, the Apex Court has considered the previous decisions in ***Atma Ram Properties (P) Ltd. v/s. Federal Motors (P) Ltd. (2005) 1 SCC 705*** and ***State of Maharashtra and anr. v/s. Super Max International Private Limited and others (2009) 9 SCC 772*** and has observed thus :-

“ 7.1 As observed and held by this Court in the case of *Atma*

Ram Properties (P) Ltd. (supra), from the date of the decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises 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. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

7.2 The decision in the case of Atma Ram Properties (P) Ltd. (supra) has been subsequently followed by this Court in the case of Super Max International Private Limited and Ors., (supra). In the said decision, it is further observed and held that in fixing the amount subject to payment of which the execution of the order/decreed is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount. Therefore, in a revision/appeal preferred by the tenant, who has suffered an eviction decree, the appellate/revisonal court while staying the eviction decree 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. ”

8. In the instant case, the Respondents having suffered a decree of eviction, can continue to occupy the premises on payment of interim compensation at the same rate at which the Petitioner - landlord would

have let out the premises and earned rent, had he vacated the premises. It is not in dispute that the Respondents Nos.1 to 4 are in possession of the residential premises admeasuring 3200 sq. ft. situated at Cumbala Hill, which is a prime locality of south Mumbai. The said flat comprises of a living room, dining room, four bedrooms with balconies, kitchen and a store room and in addition a garage. The leave and license agreement, a registered document, which was produced by the Petitioners before the Appellate Court reveals that the adjoining premises having same carpet area and similar facilities has been let out at license fees of Rs.7,00,000/- per month with a huge security deposit. The said leave and license agreement in respect of the adjoining premises was the best indicator to determine the quantum of compensation and the said agreement could not have been discarded for want of valuation report, particularly considering the fact that the genuineness of the said agreement was not in dispute. Furthermore, the Appellate Bench has not assigned any reasons in determining the interim compensation at the rate of Rs.2,00,000/- per month. Such determination, without any basis, is arbitrary and unjustified. Having considered the material on record, the impugned order fixing compensation at Rs.2,00,000/- per month cannot be sustained. Relying upon the leave and license agreement in respect of the adjoining flat,

the interim compensation in respect of the subject flat is fixed at Rs.7,00,000/- per month.

9. Under the circumstances, Writ Petition No.13584/2022 is dismissed. Writ Petition No.15459/2022 is allowed. The interim compensation in respect of the suit flat is fixed at Rs.7,00,000/- per month, payable from the date of the eviction decree till the disposal of the appeal. The arrears of the interim compensation shall be deposited before the Appellate Bench within a period of six months from the date of the order and the monthly compensation of Rs.7,00,000/-shall be deposited on or before 15th day of each month.

10. Pending Interim Applications, if any, stands disposed of.

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JAYANI

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JAYANI
Date: 2023.10.25
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(SMT. ANUJA PRABHUDESSAI, J.)