

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.7769 OF 2023**

**IN**

**FIRST APPEAL NO.665 OF 2023**

Rachna Hotumal Savalani : Applicant

**IN THE MATTER BETWEEN**

Rachna Hotumal Savalani : Appellant

Vs.

Gordhan Jiwatram Savalani  
since deceased through legal heirs

Prem Gordhan Savalani : Respondent

**WITH**

**INTERIM APPLICATION NO.7786 OF 2023**

**IN**

**FIRST APPEAL NO.664 OF 2023**

Rachna Hotumal Savalani : Applicant

**IN THE MATTER BETWEEN**

Rachna Hotumal Savalani : Appellant

Vs.

Mrs. Kiran Gordhan Savalani  
since deceased through legal heirs

Prem Gordhan Savalani & Anr. : Respondents

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Adv. Amrut M. Vernekar, for the Applicant/Appellant.

Adv. Shailesh Shah a/w Adv. Abhishek Matkar i/by Adv. S. P. Kanuga, for  
the Respondent in F.A/664/2023 & FA/665/2023.

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**CORAM : KISHORE C. SANT, J.**

**DATE : 4TH MARCH, 2024**

**PC. :**

1. Heard learned Advocates for the respective parties.
2. This Application is filed seeking stay to the common judgment and order dated 29<sup>th</sup> March, 2023, passed by learned City Civil Court, Bombay, in SC Suit No.9238 of 1995 and Suit No.9240 of 1995.
3. The facts in short as per the case of the Defendant/Appellant herein that the Flat Nos.301 & 302 were purchased from his money that he transferred from Hong Kong for the purpose of convenience, he use to transfer the amount to his brother for purchase of these flats. The brother Plaintiff in the suits however purchased one flat in his name and another flat in the name of his wife.
4. The Trial Court on recording an evidence and after trial held that the amount of purchase of flats was paid by the Plaintiff and decreed the suit directing to hand over both the suit flats to the Plaintiff. Those flat Nos.301 & 302 situated at 3<sup>rd</sup> Floor, Sangeet Sarita, 51-G, Bhulabhai Desai Road, Mumbai 400 026 within a period of one month from that date.
5. This Court at the initial stage prior to transfer of the Suit was pleased to appoint a receiver on both the flats. By way of arrangement the receiver appointed Plaintiff as agent in the flat No.301. The Defendant was appointed as agent for flat No.302. Thus as on today both the parties are in

possession of respective flats. The said arrangement is continued by way of ad-interim relief. There is no dispute about the same.

6. Now a prayer is made by original defendant seeking stay to the effect execution and operation of the impugned order.

7. Heard both the parties.

8. It is the case of the Appellant that there is evidence to show that in fact the Defendant has substantially paid the amount towards purchase of the flats. The learned Trial Judge has ignored such evidence. On the last hearing this Court had expressed that if the Applicant wants to continue to reside the flat, it would be at payment of some amount to Respondent as now there is decree in favour of the Respondent. Learned Advocate for the Appellant submits that the Applicant is a widow without source of income still she would pay Rs.50,000/- towards compensation in addition to that she is already paying Rs.16,000/- per month towards society charges. Submitting that she does not have income source and now she is a senior citizen, he prays that the she should be allowed to continue to occupy flat No.302 on such payment.

9. Learned Advocate for the Respondent vehemently opposed this offer he has also filed an affidavit in reply to the Application. He has produced on record a chart showing the market rate at which the flats are

given on rent per month. On a chart it is seen that the monthly rent of the flats ranges from Rs.50,000/- to Rs.1,35,000/-. The first Agreement of rent is of 2009. The date of last agreement is 26<sup>th</sup> November, 2023. He thus submits that going by the market rate she should pay at least Rs.1,25,000/- per month. He further submits that as per the rent agreements there is clause of escalation in the rent. He thus submits that if stay is to be granted the Applicant be directed to pay Rs.1,25,000/- per month.

10. This Court has considered the fact that now there is clear decree in favour of the Respondent. Though the learned Advocate for the Applicant vehemently submitted that the ratio in the case of ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.***<sup>1</sup> is not applicable as there the case was between landlord and tenants whereas in the present case both the parties are from the same family. This Court finds that in any case now there is finding recorded by the Trial Court in favour of the Respondent. It would not be fair to deprive him of the fruits of the decree. As rightly submitted by the learned Advocate for the Respondent that from 1989 till now Applicant has occupied the flat without paying any compensation. If means profits are to be considered, it would be at least Rs.60,000/- per month that is also not paid as the inquiry is still going on.

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1 (2005) 1 SCC 705

11. Taking into consideration all the above aspects this Court passes the order by fixing the amount of monthly compensation, it would be stagnant till the appeal is decided. In cases of rent agreement there is always escalation clause. Considering all these factors this Court finds that it would be reasonable to direct the Applicant to pay to Respondent an amount of Rs.1,00,000/- per month excluding maintenance charges towards condition for grant of stay to the impugned order.

12. Since now the suit is decided this Court finds that the receiver needs to be discharged in view of the above discussion, following order.

### **ORDER**

- a) Interim Application No.7786 of 2023 is partly allowed.
- b) There shall be stay to the impugned judgment and decree to the extent of flat No.302, subject to condition of depositing amount of Rs.1,00,000/- per month to be paid to the Respondent.
- c) The Receiver stands discharged without passing account. So far as flat No.301 is concerned.
- d) In case there are consecutive two defaults and three defaults in aggregate the Receiver to take possession of the flat.

- e) Both the Applications stand disposed of.

**(KISHORE C. SANT, J.)**

*(Corrected pursuant to speaking to minutes of order dt. 12<sup>th</sup> March, 2024.)*