

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

Civil Revision Application NO. 531 OF 2012

F.S. Kerr And Co. Pvt. Ltd.	...Applicant
Versus	
N.M. Wadia Charities , A Public Charitable Trust And Ors.	...Respondents

WITH

Civil Revision Application NO. 677 OF 2015

M/s. Prime Properties Pvt. Ltd.	...applicant
Versus	
N.m. Wadia Charities, And Ors.	...Respondents

Adv. Aloukik R. Patil i/b. Adv. Vikram V. Pai for the Applicant in
CRA/531/2012 & Respondent No.6 in CRA/677/2015.

Adv. Om Prakash Vaishnaw a/w. Adv. Jayant B. J. & Adv. Chhaya
Law & i/b. Keystone Partners for applicant in CRA/677/2015 & for
Respondent No.6 in CRA/531/2012.

Shri. Vishwas Bendra Authorized representative of applicant in
CRA/531/2012 present in the Court.

Shri. Shailesh P. Redij Authorized representative of Respondent
no.6 in CRA/531/2012 present in the Court.

CORAM : RAJESH S. PATIL, J.

DATED : 26 MARCH 2024

P.C.:

1. These two civil revision applications have been filed by the original plaintiff and original defendant no.1 in a suit being R.A.E Suit No.2456 of 1986 (for short 'First Suit'). The first suit was filed on the ground of "*subletting*", and the said suit was dismissed. The plaintiff thereunder filed an appeal before the Division Bench of the Small Causes Court. During the pendency of the eviction proceedings the original plaintiff being a trust by a conveyance sold the suit property to Respondent No.6 (Prime Properties Private Limited). The appeal was further perused Prime Properties Private Limited. The Appellate Bench of the Small Causes thereafter after hearing the parties, allowed the appeal and passed an eviction decree against the defendant no.1, i.e. F. S. Kerr & Co. Private Limited and defendant No.2 (Chetak Construction Limited). Mr. Pujari submits that defendant no.3 (Texdyes Corporation) thereafter by way of deed of surrender dated 19 March 2024 bearing Registration No.BBE-1/2446/2004 handed over the possession of part of the suit premises, to original defendant no.1 (F.S. Kerr & Co. Private Limited).

2. Original defendant no.1 (F.S. Kerr & Co. Private Limited) filed Civil Revision Application No.531 of 2012

challenging the part of the eviction decree. So also, the original plaintiff/landlord (Prime Properties Private Limited) challenged the impugned judgment and decree, whereby a part of the premises of which eviction decree was not passed, being Civil Revision Application No.677 of 2015.

3. Mr. Pai, submits that in the meanwhile, now landlord (Prime Properties Private Limited) have filed eviction Suit being R.A. & E No.1460 of 2011, seeking possession of the entire suit premises from (F.S. Kerr & Co. Private Limited). He submits that the said eviction suit is pending before the Court of Small Causes. He submits that in the meanwhile the parties have now entered into the settlement. He submits that therefore, he seeks liberty to withdraw the civil revision application No.531 of 2012. So also, he seeks liberty to withdraw the amount, which was deposited by his client before this Court pursuant to the direction given by this Court by its order dated 27 November 2015, as per the ratio laid down by the Supreme Court in the judgment of ***Atma Ram Properties V/s. Federal Motors reproted*** in ***(2005) 1 SCC 705*** and further order dated 1 December 2016. Mr. Pai, submits that his clients have already deposited a monthly compensation calculated

at the rate of Rs.3,70,000/- per month from the date of the Trial Court decree till 30 June 2023. He seeks liberty to allow F.S. Kerr & Co. Private Limited, to withdraw the said amount along with accrued interest. He submits that original defendant no.2 were in fact sister concern of defendant no.1. He submits that as far as defendant no.3 is concerned, the said firm already by way of deed of surrender dated 19 March 2004 has handed over the possession to his client, i.e. F.S. Kerr & Co. Private Limited, therefore, this Court may grant liberty to withdraw to civil revision application.

4. Mr. Omprakash Vaishnav appearing for the original plaintiff (Prime Properties Private Limited) submits that he is in agreement with submission made by Mr. Pai. He further submits that he has instructions from his client to withdraw the civil revision application No.677 of 2015. He further submits that he has no objection if the amount deposited by F.S. Kerr & Co. Private Limited is allowed to be withdrawn along with accrued interest. Hence, civil revision application No.531 of 2012 and civil revision application no.677 of 2015 are disposed, as withdrawn.

5. M/s. F.S. Kerr & Co. Private Limited is permitted to

withdraw the sum deposited in this Court along with accrued interest.

6. Civil revision applications are accordingly disposed of. In sequel, interim application, if any, also stands dismissed.

7. All parties to act on authenticate copy of this order.

(RAJESH S. PATIL, J.)