

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

**INTERIM APPLICATION NO.13368 OF 2023
IN
CIVIL REVISION APPLICATION NO.280 OF 2022**

Shaikh Abdul Rauf	...Applicant
Versus	
Anita Dominic Dsouza (Since Deceased) Thr. Lrs. Brian Joseph Dsouza	... Respondents

Mr. Jaydeep Deo for Applicant in IA/13368/2023 &
for Respondent in CRA/280/2022
Mr. Suresh Sabrad a/w. Mr. Amey Sawant Respondent in
IA/13368/2023 for Applicant in CRA/280/2022.

CORAM : RAJESH S. PATIL, J.

DATED : 18 JANUARY 2024

P.C.:

1. This Interim Application is filed by tenant who is the Respondent in the Civil Revision Application filed by the landlord, before this Court. The eviction decree passed by the Trial Court was reversed by the Appellate Bench of the Court of Small Causes thereby allowing the Appeal of the tenant, and setting aside the judgment and decree of the Trial Court and allowed the Tenant to receive the interim compensation deposited.

2. The Landlord being dissatisfied by the judgment and decree of Appellate bench has filed Civil Revision Application under Section 115 of the Code of Civil Procedure before this Court.

This Court by its order dated 29 June 2022 was admitted the Civil Revision Application and the Paragraph No.7 recorded that status quo as regards withdrawal of the amount deposited by the tenant in the Small Causes Court, until further orders.

3. Mr. Deo appearing on behalf of the tenants submits that the present Interim Application is filed on 27 June 2023. The present Interim Application records that there is change in the circumstances after the admission of the Civil Revision Application. The tenants submits that he is 74 years of age and he is suffering from various elements like suffering Arthritis, Knee pain, back pain and required money for his medical expenses as he is advised to undergo knee replacement surgery. The medical reports to that effect have been enclosed to the Interim Application.

4. Mr. Deo referred the judgment of Supreme Court in the case of ***The State of Maharashtra V/s. Super Max International Pvt. Ltd.*** reported in ***(2009) 9 SCC 772***. He submits that in the paragraph No.79 in this Judgment the Supreme Court has clarified that if there is reversal eviction decree the tenant would be entitled to receive the entire amount deposited by him. The Paragraph No.79 of the said judgment reads as under :

“79. Before concluding the decision one more question needs to be addressed: what would be the position if the tenant’s appeal/revision is allowed and the eviction decree is set aside? In that even, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The

deposited amount, along with accrued interest, should only be paid after the final disposal to either side depending upon the result of the case.”

(Emphasis supplied)

4. Mr. Sabrad appearing for the Landlord opposes this Application. He submits that the amount should not be allowed to be withdrawn at this stage as there are fair chances that the Landlord can succeed in this proceedings since the ground for eviction was bonafied requirement of eviction and Trial Court has rightly decreed the suit. However, the Appellate Court without considering the legal position has allowed the Appeal. He further submits that the tenant should not be allowed to withdraw the amount, which has already been deposited by him.

5. I have carefully considered the submission made in this Interim Application and by taking into the ratio, laid down in the judgment of the Super max (supra), suffice would be purpose if the tenant is allowed to withdraw the amount deposited by him in the Lower Appellate Court along with accrued interest if any, subject to giving an undertaking in this Court that in case, this Court directs at the time of the disposal of the Civil Revision Application, to pay certain amounts, he will deposit the said amount in this Court.

6. Hence, the present Interim Application is allowed in terms of prayer clause (a). The prayer clause (a) reads as under.

“(a) That the Applicant/Orig. Defendant No.1 be permitted to withdraw the amount deposited by him in Small Causes Court, Mumbai pursuant to the Order dated 19/7/2018 passed below Exhibit 7 in (A1) Appeal No.8 of 2018 along with accrued

interest.”

7. The present Interim application is disposed of accordingly.

8. All the parties to act on an authenticated copy of this order.

9. Mr. Sabrad at this stage seeks stay to the execution of this order for a period of four weeks. The execution of present order is stayed for the period of four weeks.

(RAJESH S. PATIL, J.)