



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 53 OF 2018**  
**IN**  
**SECOND APPEAL NO. 579 OF 2016**

Shri. Yashwant Govind Mhaskar. ...Applicant.

**In the matter between :**

Bharat Sanchar Nigam Ltd. ...Appellant.

**Versus**

Shri. Yashwant Govind Mhaskar ...Respondent.

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*Ms. Neeta Masurkar for the Appellant.*

*Ms. Nilima V. Sanglikar for the Applicant/Respondent.*  
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**Coram : Sharmila U. Deshmukh, J.**

**Date : April 24, 2024.**

**P. C. :**

1. Civil application has been preferred seeking a direction to the Appellant to pay to the Applicant compensation at the rate of Rs. 20,000/- per month as per the principles laid down by the Apex Court in the case of ***Atma Ram Properties (P) Ltd v. Federal Motors (P) Ltd [(2005) 1 SCC 705]***.

2. The suit was filed by the Applicant against the Appellant for possession of House No.913 admeasuring 822 sq.ft along with open

land admeasuring 400 sq. Ft in Gat No. 130 at village Sasavane, taluka Alibaug, district Raigad.

**3.** The suit property was leased to the Appellant for a term of 5 years from 1<sup>st</sup> February 2006 to 31<sup>st</sup> January 2011. Subsequently, upon the expiry of lease a notice to quit was issued on 20<sup>th</sup> June 2011 calling upon the Appellant to handover the vacant possession of the subject property by removing the mobile tower. In reply, the Appellant made an offer of 20% increase in the rent as suggested by the Fair Rent Assessment Committee which was not accepted as the same was substantially lesser than the market rent. The suit for possession and damages came to be filed. It was decreed on 5<sup>th</sup> July 2013 directing the Appellant to handover the possession of suit property and rent of Rs.8,000/- per month from the date of filing of the suit till possession of the property is handed over excluding the rent received by the Applicant.

**4.** By way of Regular Civil Appeal No.196 of 2013, the Appellant challenged the judgment and order of the trial Court. The appeal also came to be dismissed on 3<sup>rd</sup> September 2014. As against the same, the present second appeal was filed on 15<sup>th</sup> April 2015. On 18<sup>th</sup> April 2015, ad-interim relief in terms of prayer clause (a) was granted subject to payment of Rs.8,000/-per month as rent from the date of filing of the

suit till 30<sup>th</sup> April 2015 accepting the submission made by the learned counsel appearing for the Appellant. It appears that on 18<sup>th</sup> March 2024 the possession of the property has been handed over to the Applicant. The rent of Rs.8,000/- per month has been received by the Applicant till December 2023.

**5.** By the present civil application, compensation at the rate of Rs.20,000/- per month has been sought.

**6.** Heard Mrs. Sanglikar, learned counsel for the Applicant and Ms. Masukar, learned counsel for the Appellant.

**7.** Learned counsel appearing for the Applicant has taken this Court through the order of 18<sup>th</sup> April 2015 passed by this Court in Civil Application No. 678 of 2015. She would submit that in accordance with the decree of the Trial Court directing the payment of rent at the rate of Rs.8,000/- per month, this Court as and by way of ad-interim relief directed the deposit of Rs.8,000/- per month from the date of suit till the handing over of possession. She submits that the same is an ad-interim relief and in accordance with the principles laid down by the Apex Court in the case of ***Atma Ram Properties (supra)***, the issue as regards the stay under the provisions of Order 41 Rule 5 of CPC was not adjudicated. She points out to the leave and license agreement

dated 20<sup>th</sup> October 2015 in respect of a property situated at Taluka Alibaug, District Raigad which according to her is a comparable leave and license agreement for Rs.39,950/-. She submits that considering the market rent of Rs.39,950/- the amount of Rs.20,000/- per month is much lesser. She further points out the ready reckoner rate, the extract of which is annexed at page 50 which shows that the rate per square metre is Rs.45,900/- in respect of the subject property. She submits that the appellant in the affidavit-in-reply in paragraph 6 has stated that as per the Fair Rent Assessment Committee of the Appellant, the assessment of rent which is done on the basis of ready reckoner rate gives an amount of Rs.12,641/- as total rent for telephone building and mobile tower. Learned counsel appearing for the Applicant, on instructions, submits that the said figure of Rs.12,641/- is acceptable to the Applicant as compensation.

**8.** *Per contra* learned counsel appearing for the Appellant submits that the Trial Court has granted a sum of Rs.8,000/- per month as rent from the date of filing of the suit till the possession of suit property is handed over, which rent has been duly paid by the Appellant till the handing over of possession of the suit property. She submits that the said order was continued right up to this Court and on 18<sup>th</sup> April 2015 this Court while granting stay to the decree, has directed the deposit

of said amount at the rate of Rs.8000/- per month. She would further submit that the monthly rent which was being paid to the Applicant during the subsistence of lease was in the range of Rs.4,987/- and the Trial Court while decreeing the suit, has considered the amount of Rs.8,000/- which has been continued till now. She would further submit that the figure which is mentioned in paragraph 6 was relatable to the assessment of rent and was an answer to the Applicant's claim for rent of Rs.20,000/- per month and the same cannot be construed as an admission to deposit the same amount as compensation. She would further point out that the leave and license agreement which has been annexed to the application is in respect of a property which is situated almost 18 kilometers away from the suit property and the same therefore is not a comparable instance.

**9.** Considered the submissions and perused record.

**10.** The decree of termination of the lease is not disputed. While directing handing over possession of the suit property, the Trial Court had directed the Appellant to pay rent of Rs.8,000/- per month from the date of filing of the suit till possession of the suit property is handed over excluding the rent which was received by the Applicant during the said period.

**11.** In the present second appeal, by order dated 18<sup>th</sup> April 2015 this

Court as and by way of ad-interim relief considered the submissions of the Appellant that the amount of Rs.8,000/- per month will be deposited. This was by way of an ad-interim relief and amounted to compliance of the decree passed by the Trial Court.

**12.** The Apex Court in the case of ***Atma Ram Properties (supra)*** was considering the issue as regards the conditions which could be imposed by the Appellate Court while granting a stay under the provisions of Order 41 Rule 5 of CPC. The Apex Court held that where the tenancy is terminated, the right of tenant to continue in possession comes to an end and thereafter during the period which the tenant continues to occupy the premises, he becomes liable to pay damages for the use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant. The Apex Court further held that the tenant having suffered a decree or order of eviction may continue his fight before the superior forum, however, the tenancy would stand terminated with effect from the date of decree passed by the lower forum. The Apex Court summed up its conclusion in paragraph 19 which reads as under:

“(1) While passing an order of stay under Rule 5 of [Order 41 of the Code of Civil Procedure](#), 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably

compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) In case of premises governed by the provisions of the [Delhi Rent Control Act, 1958](#), in view of the definition of tenant contained in clause (l) of [Section 2](#) of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, 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;

(3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.”

**13.** Applying the principles laid down by the Apex Court in ***Atma Ram Properties (supra)*** it is clear that as a condition of stay under Order 41 Rule 5 of CPC, the Court has jurisdiction to put the Appellant to such terms as would reasonably compensate the decree-holder for the loss occasioned by delay in execution of decree.

**14.** In the present case, by order of 18<sup>th</sup> April 2015 what was granted was an ad-interim relief. It cannot be disputed that at that point of

time there was no material placed on record to enable the Court to ascertain the amount of compensation which could be directed to be paid by the Appellant during the pendency of appeal proceedings as a condition of stay.

**15.** The amount of Rs.8,000/- per month which is directed to be paid was in accordance with the decree of Trial Court. Subsequently, by way of present application the Applicant has sought to invoke the principles laid down by the Apex Court in the case of ***Atma Ram Properties (supra)*** and as such the present application is maintainable.

**16.** Now, coming to the issue as to the amount of compensation which can be directed to be paid, the Apex Court in the case of ***Atma Ram Properties (supra)*** has held that such amount as would reasonably compensate the decree holder for the loss occasioned by delay in execution of the decree is required to be directed to be deposited. It is clear that the amount of compensation to be deposited cannot be excessive or operate in terrorarm. The compensation should be reasonable and the factor which is to be taken into consideration is the rate at which the landlord could have let out the premises on being vacated by the tenant.

**17.** In the present case, as and by way of a comparative instance

what is produced on record is a leave and license agreement executed on 20<sup>th</sup> October 2015. Perusal of the said agreement would indicate that the same is in respect of a property situated at taluka : Alibag district : Raigad. The suit property is situated in village Sasavane and the affidavit-in-reply of the Appellant specifically pleads that the leave and license agreement is in respect of a property which is situated almost 18 kilometers away from the suit property. There is no rejoinder filed by the Applicant to the said affidavit and as such the contention stand uncontroverted. Nothing has been demonstrated to show to this Court that the said property is situated in the vicinity of suit property so as to constitute a comparable instance for arriving at an amount of compensation.

**18.** Now, what remains is the extract which shows the ready reckoner rate of Rs.45,900/- per square meter. Apart from that, there is no material produced on record and pertinently the Appellant has not produced any material on record to show what would be the reasonable amount of compensation.

**19.** The reply of Appellant in paragraph 6 pleads that the Fair Rent Assessment Committee has done the assessment of rent based on the ready reckoner rates which is aggregating to Rs.12,641/- total rent for telephone building and mobile towers. Considering the submission

made by the learned counsel appearing for the Applicant, the said amount can be directed to be deposited as reasonable compensation pending the hearing and final disposal of second appeal as and by way of a condition of stay. In my opinion, in the absence of any comparative indicator of market rent at which the premises could be let out, the sum of Rs.12,641/- can be directed to be deposited as and by way of a condition of stay under Order 41 Rule 5 of CPC.

**20.** In the light of above, the following order is passed :

(a) The Applicant is directed to deposit in this Court a sum of Rs. 12,641/- per month from the date of termination of tenancy, i.e., from 20<sup>th</sup> June 2011 as the tenancy came to an end upon termination of lease by efflux of time till the date of handing over possession.

(b) The amount of Rs.8,000/- per month which has already been deposited by the Appellant to be adjusted against the said amount of Rs.12,641/-.

(c) The arrears to be deposited within a period of 6 months from today.

**21.** Civil application stands allowed in the about terms.

**[Sharmila U. Deshmukh, J.]**