



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11375 OF 2024**

Vishni Narsingdas Adnani (deceased)
through LRs Malti Jethani @ Drupati
Adnani and Ors.

... Petitioners

versus

Dr. Avinash M. Mondkar and Ors.

... Respondents

Mr. Pradeep Thorat with Mr. Nishant Vyas, Mr. Parth Choudhary, Mr. Yagnesh Vyas, for Petitioners.

Mr. Durgaprasad Sabnis with Mr. Harsh Pathak, for Respondent Nos.1, 2, 5 and 6.

CORAM: N.J.JAMADAR, J.

DATE : 18 JUNE 2025

ORAL ORDER :

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to a judgment and order dated 7 May 2024, passed by the Appellate Bench of the Court of Small Causes in Revision Application No.5 of 2022, whereby the revision preferred by the Petitioners – Landlord came to be dismissed by affirming the order passed by the Learned Judge, Court of Small Causes on an application (Exh.46) permitting the Plaintiffs – landlord to withdraw the amount only to the extent of Rs.3,07,623/- out of the rent and maintenance charges, deposited by the Respondents – tenants.
3. The controversy as to the rate at which the Defendants – tenants are liable to pay rent for the demised premises had reached this Court in an

earlier round of litigation. By an order dated 16 March 2017 in WP No.1007 of 2017, the Defendants – tenants were directed to deposit the rent @ Rs.960/- per month. The Defendants – tenants contended that the rent was to be paid @ Rs.160/- only.

4. In the backdrop of the aforesaid nature of the controversy, while directing the Defendants to deposit rent @ Rs.960/- per month, this Court clarified that the question as to whether the tenants were required to deposit the rent @ Rs.960/- per month or Rs.160/- per month will be considered at the time of final adjudication of the suit and the deposit made by the tenants shall be subject to the outcome of the suit. Simultaneously, this Court granted liberty to the Plaintiffs – landlord to make an application for withdrawal of the amount so deposited, which would be considered by the Trial Court on its own merits.

5. By an order dated 29 October 2021, the Trial Court was persuaded to partly allow the application and permit the Plaintiffs – landlord to withdraw a sum of Rs.3,07,623/- only. The Trial Court was of the view that the issue warranted adjudication. The Revisional Court did not find any ground to interfere with the order passed by the Trial Court. The Courts were of the view that no prejudice would be caused to the Plaintiffs – landlord as the balance amount stood deposited with the Court and fetched interest.

6. It is imperative to note that, while directing the Defendants – tenants to

deposit rent @ Rs.960/- per month, this Court took into account the locality where the suit premises was situated and its size. The Court explicitly observed that, the direction to deposit Rs.960/- per month cannot be said to be drastic or penal imposition.

7. It is true, the amount of rent @ Rs.960/- stands deposited with the Court and earns interest. However, the practicality of the matter cannot be lost sight of. The suit has been instituted in the year 2009. It is no solace to the landlord that the amount of rent gets deposited in Court and earns interest. Having regard to the location of the premises, by no stretch of imagination, it can be said that the rent of Rs.960/- p.m., is excessive or exorbitant.

8. In the event the Plaintiffs is permitted to withdraw the amount of rent and the interest accrued thereon, at the conclusion of the trial and final adjudication of the suit, the Court would be in a position to pass appropriate orders to make necessary adjustment depending upon the outcome of the suit. In case, the suit is decreed, the amount deposited can be adjusted against the charges for unlawful occupation. In a converse scenario, if the suit is dismissed, the Defendants would continue to occupy the suit property and the excess amount, if any, can be adjusted even against future rent.

9. In these circumstances, in my considered view, it would be appropriate to direct the release the entire amount subject to the Petitioners – landlord furnishing an undertaking to bring back the amount along with such rate of

interest as the Court may direct, in the event it is found that the Plaintiffs – landlords are not entitled to recover rent @ 960/- per month, and the Trial Court passing appropriate orders with regard to the adjustment of the rent deposited by the Defendants, depending upon the outcome of the suit.

10. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order to the extent the prayer for withdrawal of the entire amount came to be rejected, stands quashed and set aside.
- (iii) The Application for withdrawal (Exh. 46) stands allowed.
- (iv) The Petitioners – landlords are permitted to withdraw the entire amount deposited by the tenants – defendants. along with interest accrued thereon, subject to the following conditions :
 - (a) The Petitioners – landlords shall file an undertaking to bring back the excess amount along with interest at such rate as the Court may determine, in the event it is held that the Plaintiffs are not entitled to recover the rent @ 960/- per month.
 - (b) The Trial Court, while finally adjudicating the suit, shall decide the issue as to the rate at which the rent is payable and depending upon the outcome of the suit, pass appropriate orders regarding the adjustment of the amount of rent deposited, and to be deposited, by the

defendants @ 960/- per month.

No costs.

(N.J.JAMADAR, J.)