

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 9619 OF 2024

IN

CIVIL REVISION APPLICATION NO. 349 OF 2007

Jayantilal Bhanji Shah & Anr.

..... Applicants

VERSUS

Jaswantlal M. Shah

(Since Deceased represented through

Legal heirs

Nikhil J. Shah & Ors.

..... Respondents

None for the Applicants.

Mr.Kaustubh Thipsay a/w. Mr.Shivraj Patne for Respondent Nos. 1A, 1C, 2 and 3.

CORAM : RAJESH S. PATIL, J.

DATE : 21st AUGUST, 2025

P.C. :-

1) Mr. Thipsay, learned Advocate appearing for the Respondent Nos. 1A, 1C, 2 and 3 in the Interim Application submits that his clients are the legal heirs of the Original Applicant No.1 in Civil Revision Application. He submits that the Civil Revision Application was filed in the year 2007 by the erstwhile legal heirs of the present Applicant challenging an eviction decree passed by the

Trial Court and as confirmed by the Appellate Court. He submits that by an Order dated 9th October, 2007, the Civil Revision Application was Admitted. He further submits that the present Interim Application is filed on 9th May, 2024 by the landlords who are the Respondents in the Civil Revision Application seeking to fix compensation as per the market rate pursuant of the judgement of the Hon'ble Supreme Court in case of ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd., reported in (2005) 1 SCC 705.*** He submits that the present Interim Application would not be maintainable pursuant to the Order passed by this Court.

2) I have already taken a view that such an Interim Application at a belated stage for fixing monthly compensation after the Civil Revision Application is ready for final hearing would not be entertainable in the judgment delivered by this Court in case of ***Brijbhushan Chandrabali Shukla vs. Mahendra Yadav, 2024 SCC OnLine Bom 418.*** Paragraph nos. 2 to 12 of the said judgment read as under :-

Legal Frame Work :

2. It is necessary first to examine the ratio laid down by the

Supreme Court in the judgment of *Atma Ram Properties* (Supra).

3. In the said judgment Supreme Court held that while passing an order of stay to eviction decree, the Appellate Court does have jurisdiction to put the applicant on such reasonable terms as would be reasonable to compensate the decree holder for loss occasioned by delay in execution of decree by grant of stay order. In the said proceedings, eviction was sought on the ground of subletting. The decree of eviction was passed. In an Appeal preferred under Section 38 of the Delhi Rent Control Act, 1958, the Rent Control Tribunal directed the eviction to remain stayed but subject to the condition that the respondent shall deposit in the Court Rs.15,000/- p.m., in addition to the contractual rent which may be directly paid to the Appellant. Paragraph No.19 of the said judgment reads as under :-

“19. To sum up, our conclusions are:-

(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.”

(Emphasis Supplied)

4. Hence, in the judgment of *Atma Ram Properties* (Supra) Supreme Court, held that if a tenant suffers a decree of eviction, Appellate Court while granting stay to eviction decree, can put the tenant on reasonable terms, to compensate the decree holder for loss suffered by delay in execution of decree due to stay granted. The Court further held that after passing of eviction decree, in Appeal if stay to eviction decree is sought, the tenant is liable to pay mesne profit or compensation for occupation of premises from the date of decree, at the same rate at which Landlord would have been able to let out the premises and earn rent if tenant had vacated.

5. I would like to point out here that in *Atma Ram Properties* (supra), the eviction decree was passed on 19 March 2001. In an Appeal preferred by tenant, the decree of eviction was stayed on 12 April 2001, subject to condition that the tenant shall deposit in the Court Rs.15,000/- p.m. in addition to contractual rent. Hence, the condition to deposit the market rent was imposed in less than one month from passing of eviction decree.

6. Correspondingly, in the matter of *Sulochana Jadhav Vs. Jogindersingh Amarsingh* (Writ Petition No. 5658 of 2004), in Civil Application No. 688 of 2009, this Court by its order dated 4 March 2010, rejected the Civil Application seeking direction against the tenant to deposit the amount of compensation as per the market value of the suit property, filed five years after admission of Writ Petition. The said order dated 4 March 2010, reads as under :-

“The Applicant who is the Respondent in the Writ Petition has filed this application. The Applicant is the landlord and the Respondent in the application (Petitioner in Writ Petition) is the tenant. Prayers in these applications are for a direction against the Respondent/Tenant to deposit the amount of compensation at the market value and for appointment of a Court Receiver. Perusal of the record shows that at the time of hearing as to admission of the Writ Petition, the Applicant (Respondent in the Writ Petition) was heard and interim relief was granted after hearing the

Advocate for the Applicant. Except for the fact that the Writ Petitions are not heard for final disposal, no change in the circumstances is brought on record. Granting relief in these applications will amount to modification of an order granting interim relief after hearing both the parties. Hence, as of today, no case is made out for grant of any relief. The Applications are rejected. If Writ Petitions are ready for final hearing, the same shall be placed for final hearing board of 5th April, 2010.”

7. Is is also necessary here to discuss the judgment of *Super Max International Pvt. Ltd. V/s. R. M. Choksey & Ors.* reported in (2009) 3 BCR 99. The facts in the said judgment where, that the Writ Petition filed by tenant against eviction decree was “Admitted” on 22 February 2006, thereafter, the landlord on 2 July 2008 preferred Civil Application on the basis of Supreme Court judgment of *Atma Ram Properties*, praying that during the pendency of the Writ Petition, the tenant be directed to pay interim monthly compensation as per market rate. In Para No. 7 and 8 of the judgment it was held that, keeping in mind that Writ Petition is not likely to reach for hearing for quite some time, the landlord who has succeeded in getting decree of eviction is entitled to claim suitable interim compensation to meet the ends of justice. The fact that no arrangement for imposing condition, now prayed by the landlord, was canvassed on 22 February 2006 at the time of Admission, will come in the way of the landlord to call upon the Court to impose appropriate condition in terms of the legal position stated by Supreme Court in *Atma Ram Properties* case was the argument on behalf of Tenant. Indeed, the question whether the landlord would be entitled for arrears of interim monthly compensation with retrospective effect in a matter within the discretion of the Court. The Court may confine the relief to the landlord from the date of the filing of the present application. That would meet the ends of justice and address the concern of the tenants as well to that extent.

8. I pause here to observe that, in *R. M. Choksey* (supra) Writ Petition was admitted on 22 February 2006, after hearing both sides. Civil Application seeking direction to pay interim compensation as per ratio of *Atma Ram Properties* (supra) was filed on 2 July 2008. Hence the application as per *Atma Ram Properties* (supra) was filed within 18 months after admission of

Writ Petition. The Single Judge of this Court, fixed monthly compensation at the rate of Rs.33,333/- payable from the date of filing of civil application by landlord.

Facts In Present Proceedings :

9. In this background, the facts in the present proceedings are to be seen. The Civil Revision Application was admitted by order dated 17 October 2012. Record shows that at the time of admission Respondent was heard. Office remark shows that record and proceedings have been received on 21 August 2013. The Civil Revision Application is ready for final hearing.

10. The present Interim Application has been filed on 31 July 2023 claiming therein payment of market rent at the rate of Rs.70,000/- per month by the Original Defendant from date of the trial court decree dated 23 September 2009. The Interim Application has been filed after 11 years, since Civil Revision Application, has been admitted. No change in the circumstances is brought on record. According to me in such a situation granting of any interim relief in this Interim Application will amount to modification of the order passed while Admitting the Civil Revision Application.

11. In my opinion if Interim Application as per the ratio laid down by the judgment of *Atma Ram Properties* (supra) is preferred in a short span of time after the Appeal is admitted and stay is granted to the execution of eviction decree, the same can be decided by Appellate Court on its own merits, by putting the tenant on reasonable terms.

12. But certainly such an application preferred much later for fixing market rent/compensation, after the Appeal is ready for final hearing, would not be entertainable when both the parties were heard at the time of Admission of Appeal and the execution of judgment and decree of eviction was stayed.

3) In my view suffice will be the purpose, if the present Civil Revision Application is taken for final hearing at the earliest

possible date.

4) Civil Revision Application be placed for final hearing in the week commencing from **8th September, 2025**.

5) The parties to file compilation of documents, short synopsis alongwith their proposition of law and authorities relied upon by them by 3rd September, 2025 and exchange photocopy of the same upon the other side.

6) Since none appears for the Applicants, Interim Application is dismissed for default.

[RAJESH S. PATIL, J.]