

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8379 OF 2025**

Kekasha Parveen Varsi,
Age 55 years, Occu – Business,
Residing at C/o Feeroz Banoo Varsi,
63, Rishikesh Building, Flat No.7,
2nd Floor, Worli Hill Road,
Worli, Mumbai – 400 018

... Petitioner

versus

1. Mrs. Husna Abdul Rashid Qureshi aka
2. Husna Babukhan Mohammed Vazir aka
3. Husna Usman Ahmed Odedara,
Age 68 years, Occu – Housewife,
All residing at Flat No.5A, Gr. Floor,
Sagar Vihar, The New Samudra Vihar
Co-op. Housing Soc. Ltd. A.G.Khan Road,
Worli, Mumbai – 400 018.

... Respondents

Mr. Jamshed Master with Ms. Natasha Bhot, for Petitioner.
Mr. Kunal Bhanage with Ms. Priyanka Acharrya, for Respondents.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 9 JULY 2025
PRONOUNCED ON : 4 SEPTEMBER 2025**

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JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. This Petition brings to the fore the contours of the powers of the Court to direct the lessee or licensee to deposit the amount towards the rent or

licencee fee under Order XV-A of the Code of Civil Procedure, 1908 (the Code), as inserted by the Bombay High Court.

3. The aforesaid issue arises in the backdrop of the following facts :

3.1 The Petitioner instituted a suit for eviction before the Court of Small Causes, being L.E. & C Suit No.135 of 2009 asserting that Flat No.5A, in the building New Samudra Vihar Co-op. Hsg. Soc. Ltd., Worli, Mumbai, (the suit premises) was purchased by the Plaintiff's mother. The Defendant had known the Plaintiff's mother as they both came from the same native place, Nai Basti, Chamcham Gally, Agra. At the request of the Defendant, the mother of the Plaintiff had permitted the Defendant to occupy the suit premises gratuitously. Despite repeated promises the Defendant did not vacate the suit premises. Thus, the licence was terminated by notice dated 11 May 2009. Yet, the Defendant continued to occupy the suit premises. Hence, the suit for recovery of the possession of the suit premises from the Defendant – gratuitous licensee.

3.2 In the said suit, the Plaintiff filed an application seeking directions to the Defendant to deposit a sum of Rs.30,000/- per month, pending the hearing and final disposal of the suit, by way of interim compensation, as the Defendant continued to be in wrongful use and occupation of the suit premises.

3.3 The Defendant resisted the application. It was denied that the

Defendant was a gratuitous licensee in respect of the demised premises. On the contrary, the Defendant claimed, late Feroz Banoo Varsi had received rent from the Plaintiff in respect of the suit premises. In any event, the application for deposit of interim compensation was not maintainable as it has yet not been adjudicated that the Defendant was in wrongful occupation of the suit premises.

3.4 Learned Judge, Court of Small Causes, was persuaded to partly allow the application and direct the Defendant to deposit a sum of Rs.4,449/- towards the interim mesne profits with effect from the date of the institution of the suit. Learned Judge was of the view that, though initially the Defendant was allowed to occupy the suit premises gratuitously, yet, once the Plaintiff instituted the suit for recovery of possession of the suit premises, the licence comes to an end, and, therefore, the Defendant was liable to pay the compensation. After evaluating the reports of the Architects tendered by the Plaintiff and the Defendant, learned Judge, Court of Small Causes, considered it appropriate to determine the sum of Rs.4,449/- per month as an interim mesne profits.

3.5 The Petitioner was not satisfied with the said quantum of compensation and preferred Misc. Appeal being No.3 of 2017 before the Appellate Bench of the Court of Small Causes. By the judgment and order dated 22 December

2021, while holding that the Misc. Appeal was not maintainable and treating the said proceedings as Revision under Section 42(4) of the Presidency Small Causes Court Act, 1882, the Appellate Bench set aside the order passed by the trial Court dated 22 April 2016.

3.6 The Appellate Bench was of the view that the order passed by the trial Court could not be sustained even by resorting to the provisions in Order XV-A of the Code (Bombay High Court Amendment), as for the applicability of the provisions of the said Order, there must be undisputed jural relationship between the parties and undisputed amount of rent or licence fee. Then only the Court can direct the Defendant to pay the admitted rent or licence fee. Since the jural relationship between the parties was in dispute, the trial Court could not have directed the payment of interim compensation during the pendency of the suit.

3.6 In the meanwhile, pursuant to the order passed by the Trial Court, the Defendant had deposited a sum of Rs.6,71,981/- in the Court of Small Causes. Post the impugned order, the Defendant filed an application seeking refund of the said amount along with interest thereon.

3.7 By an order dated 16 July 2024, learned Judge directed the refund of the amount deposited by the Defendant, as the order passed by the trial Court directing deposit of interim compensation was set aside by the Appellate

Bench.

3.8 Being aggrieved, the Petitioner has preferred this Petition assailing the order passed by the Appellate Bench in Misc. Civil Appeal No.3 of 2017 as well as the order dated 16 July 2024 passed by the learned Judge, directing refund of the amount deposited by the Defendant.

4. I have heard Mr. Jamshed Master, learned Counsel for the Petitioner, and Mr. Kunal Bhanage, learned Counsel for the Respondents, at some length.

5. Mr. Master, learned Counsel for the Petitioner, submitted that the Appellate Bench was clearly in error in interfering with the well reasoned and discretionary order passed by the trial Judge. The Appellate Bench completely misconstrued the provisions contained in Order XV-A of the Code (Bombay Amendment). The very foundational premise of the reasoning of the Appellate Court that, it is only in the case of agreed rent or licence fee, the Court is empowered to pass a direction for the deposit of the rent or licence fee under Order XV-A of the Code, is flawed. The object of Order XV-A is to protect the interest of the landlord as the proceedings for eviction often drag on for a long period of time, causing incalculable harm to the landlord. In such a situation, the provisions contained in Order XV-A empowered the Court to direct the tenant or licensee to deposit the amount at the pain of striking off the defence in the event of failure. The Appellate Court lost sight of the object of the

provisions contained in Order XV-A of the Code.

6. Mr. Master submitted that the aforesaid object of Order XV-A and the applicability of the said provisions, even in a suit against gratuitous licensee has been elucidated by this Court in the case of **Apsara Development Corporation V/s. Rafique Siddique**¹. The said pronouncement has been followed in an order in the case of **Omprakash Jamuna Singh and Anr. V/s. The Sonawala Company Pvt. Ltd.**².

7. Mr. Master, however, fairly submitted that there are two other judgments which take a slightly different view. Attention of the Court was invited to a decision of this Court in the case of **Radheshyam V/s. Tuljaprasad and Ors.**³, wherein the learned Single Judge had interfered with the order of payment of interim compensation where the Plaintiff had approached the Court with a case that the Defendant was in illegal occupation of the subject premises.

8. Mr. Master also invited attention of the Court to a judgment of another learned Single Judge of this Court in the case of **M/s. Dimple Audio Video Pvt. Ltd. V/s. Dinanath Badrinath Chabra and Ors.**⁴ wherein the trial Court had directed the tenant to pay an amount of Rs.88,000/- p.m., towards the interim compensation during the pendency of the suit. Learned Single Judge held that

¹ WP No.1038 of 2022 dt. 11 January 2024

² WP No.5922 of 2024 dated 26 Nov. 2024

³ AIR 2007 Bom 83

⁴ 2015 SCC Online Bom 4243

under Order XV-A of the Code, the Court is not empowered to direct the tenant / licensee to deposit the compensation as per the market rate. Mr. Master would urge that the aforesaid two decisions were rendered in a completely different fact-situations and the pronouncement of this Court in the case of **Apsara Development Corporation (supra)**, would govern the facts of the case at hand, squarely. At any rate, according to Mr. Master, direction of deposit of Rs.4,449/- per month for the occupation of the subject flat, can under no circumstances be said to be unreasonable or onerous. Therefore, the impugned order passed by the Appellate Bench and, consequently, the order of refund of the amount already deposited passed by the trial Judge, deserve to be quashed and set aside.

9. In opposition to this, Mr. Bhanage, learned Counsel for the Respondents, submitted that the order passed by the Appellate Bench does not warrant any interference. On its plain reading, the provisions contained in Order XV-A of the Code do not empower the Court to pass an order directing the Defendant to pay the amount which does not appear to be agreed rent or licence fee.

10. Mr. Bhanage laid emphasis on the fact that the provisions contained in Order XV-A cannot be construed as the substitute for determination of mesne profit after the possession of the Defendant is declared to be wrongful, which can only happen upon the decree being passed by the competent Court. The

trial Judge was clearly in error in directing the payment of the amount towards the interim mense profit. In the process, learned trial Judge completely lost sight of the fact that the occupation of the Defendant was yet not declared wrongful.

11. In the circumstances of the case, according to Mr. Bhanage, the decisions in the cases of **Radheshyam (supra)** and **M/s. Dimple Audio Video Pvt. Ltd. (supra)**, would govern the field and since in the case of **Apsara Development Corporation (supra)**, the attention of this Court was not invited to those decisions of co-equal strength, the decision in the case of **Apsara Development Corporation (Supra)**, does not command precedential value, urged Mr. Bhanage.

12. On facts, according to Mr. Bhanage, the Defendant has categorically contended that she was a deemed tenant in respect of the suit premises having entered the same in the year 1971 and had paid rent to the mother of the Plaintiff at specified rates, and, therefore, the question as to whether the Defendant is a tenant or gratuitous licensee was required to be first adjudicated. Thus, the resort to the provisions contained in Order XV-A of the Code, was wholly unsustainable. Therefore, the Appellate Bench correctly interfered with the order passed by the learned Judge, Court of Small Causes, submitted Mr.Bhanage.

13. To start with, it is pertinent to note the learned Judge Court of Small Causes while, passing the order dated 22nd April 2016 did not advert to the provisions contained in Order XV-A of the Code. On the contrary, the learned Judge expressly ordered the Defendant to pay the sum of Rs. 4,449/- per month by way of interim mesne profits. On first principles, the Appellate Bench of the Court of Small Causes was justified in observing that the learned Judge of Court of Small Causes had not indicated with sufficient clarity the powers which the learned Judge had invoked to direct the payment of interim mesne profits, as sans a decree by the Court, where the protective regime under the Rent control legislations operates, the possession of the tenant does not become wrongful from the date of the termination of the tenancy.

14. The Appellate Bench, thereafter, proceeded to consider the submissions canvassed on behalf of the Petitioner that such a direction for payment of compensation could be lawfully passed under the provisions of Order XV-A of the Code. However, the Appellate Bench was of the view that undisputed relationship of the landlord and tenant/licencee and undisputed amount of rent/licence fee were necessary before the direction could be issued for payment of arrears of rent/licence fee under Order XV-A of the Code.

15. Whether this approach of the Appellate Bench is justifiable?

16. Order XV-A of Code, Bombay Amendment reads as under:

“ORDER XV-A

STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future *mesne profits* from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the Plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation.—The suit for eviction shall include suit for mandatory injunction seeking removal of licensee for the purpose of this Rule.

17. The text of Rule (1) of Order XV-A makes it abundantly clear that few prerequisites need to be fulfilled before the power therein can be resorted to. First, there ought to be a Suit by lessor or licensor against the lessee or licensee for eviction of the latter. Second, the prayer for eviction in such Suit may be with or without the prayer of rent or licence fee and future mesne profits. Third, the Defendant in such a Suit is obligated to deposit such amount as the Court may direct on account of arrears up to the date of the order. Fourth, the Defendant is also obligated to continue to deposit in each succeeding month the rent or licence fee claimed in the Suit as the Court may direct. Fifth, unless otherwise directed, the Defendant is obligated to continue to deposit such amount till the decision of the Suit.

18. Rule (2) of Order XV-A deals with the striking off the defence of the Defendant who commits default in making the deposits as ordered by the Court.

19. The object of Order XV-A, which came to be inserted by the Bombay High Court amendment, with effect from 1st October 1983, as is evident, appears to be to secure the interest of the landlord as the occupation of the

Suit premises by the lessee or licensee after the termination of the lease or licence, as the case may be, without payment of any rent or licence fee would cause grave prejudice to the landlord. Often the Suits for eviction await adjudication years together. A determination of mesne profits after long lapse of time from the termination of tenancy and the institution of the suit for eviction, is not a solace for the landlord. Conversely, the lessee or licensee who continues to occupy the suit premises should not be permitted to use the same without payment of the rent or licence fee. The validity of the Order XV-A came up for consideration before the Bombay High Court immediately, in the case of **Shyam Liladhar Paul Vs Ghanshyamdas Tharumal & Anr**⁵ wherein the validity of Order XV-A was assailed on the ground that it was not a procedural power and thus outside the rule making power of the High Court under Section 122 of the Code. A learned Single Judge of this Court negated the challenge. In the process, the object of introduction of Order XV-A was expounded as under:

“3.

The purpose of rule is very clear. It had been the experience that in a suit between the landlord and the tenant after the tenancy was determined by the landlord, no payment was made by the tenant at the agreed rate and it was only when the decree for mesne profits was passed that the landlord

⁵ 1984 SCC OnLine Bom 253.

could get the compensation or money for use and occupation by the tenant of his premises after the decision in the suit and after the enquiry into the mesne profits was completed. It is in order to mitigate the agony of the landlord in not receiving the payment for use and occupation by the tenant at least at the agreed rate of rent for a long period till the decision of the suit, that the power to pass an interlocutory order in the nature of Order XV-A Rule 1 was conferred upon the Court, so that till the tenant is using the premises of the landlord, he should continue to pay him the rent at the agreed rate. Otherwise due to the procedural delays caused in the final adjudication of the suit, the interest of the landlord was adversely affected. The power to direct the tenant to deposit the arrears of rent and to direct him to continue to make the payment to the landlord at the agreed rate is, therefore, a procedural power conferred upon the Court to do justice looking to the nature of the lis.”

(emphasis supplied)

20. In the case **Gautamchand B. Dige Vs Dhondiram D Gurav**,⁶ the learned Chief Justice, observed that though his Lordship had serious doubts as to how far, in the absence of Order XV-A , the Court could direct deposit of arrears of rent and future mesne profits pending a suit for eviction of the tenant and recovery of mesne profits in exercise of its powers either under Order XX Rule 12 or under Order XXXIX Rule 10 or under Section 151 of the Code, his

⁶ 1985 Bombay Law Reporter 5.

Lordship did not think that it was necessary to enter into that discussion, having regard to the specific provision contained in Order XV-A where tenancy was admitted and the dispute was only as regards whether the tenancy was monthly tenancy or yearly tenancy. In such situation Order XV-A applied.

21. Rule (1) of Order XV-A uses the word, “may”, consciously. This emphasizes the fact that the power to direct the Defendant or the tenant or lessee or licensee to pay the rent or licence fee is discretionary. It is well nigh settled that, whenever the legislature confers discretion in the Court, such discretion must be exercised in a judicious manner. The duty to exercise discretion in a judicious manner, after being informed of all the attendant circumstances, assumes even more significance while exercising the power under Rule of Order XV-A on account of the drastic consequence the failure to comply with the order of deposit entails, under Rule (2) of Order XV-A.

22. The failure to deposit the amount as directed by the Court under Rule (1) is at the pain of striking off the defence of the Defendant. Undoubtedly, Rule (2) of Order XV-A envisages an opportunity of hearing and again exercise of discretion by the Court in ordering striking off the defence. Yet, the necessity to exercise the judicious discretion in determining the questions as to whether a direction for deposit be made and, if so, at what rate, cannot be ever emphasized. Nor the Court can lose sight of the fact that, save in cases of

undisputable rate of rent or licence fee, the determination at an interim stage often does not have the benefit of the evidence to equip the Court to decide the issue.

23. In the case of **Radheshyam(Supra)**, the Defendant was stated to be in illegal occupation of the subject premises. An Application was filed alleging that the Defendant was claiming to be the tenant of the property and, thus, the Defendant be directed to pay Rs.500/- per month towards damages. In that context, the learned Single Judge observed that the landlord did not approach the Trial Court with a case that they were licensors. They did not state the rate of rent agreed between the parties. Thus the provisions of Order XV-A would come into play only when there is *prima facie* evidence to show that the rent or licence fee was agreed between the parties and same would be charged as a liability.

24. In the case of **M/s. Dimple Audio Video Pvt. Ltd. (supra)** the learned Single Judge of this Court interfered with an order passed by the Court of Small Causes whereby the Petitioner therein was directed to pay an amount of Rs.88,000/- per month, having regard to the market rent which the premises therein could fetch. The learned Single Judge held that the analogy sought to be drawn from the propositions in the case of **Atma Ram Properties (P) Ltd Vs**

Federal Motors Pvt Ltd⁷ was inapposite and the principle therein could not be invoked when there is a specific provision under Order XV-A which deals with the situation prior to the decision of the Suit. If such power is assumed by the Small Causes Court then the Small Causes Court would be free to direct the tenant/licencee to deposit compensation as per the market rate even before the Suit is decided on merits. Such power is not contemplated under Order XV-A of the Code.

25. It seems, the aforesaid line of decisions proceeds on the premise that there ought to be the pre-existing relationship of landlord and tenant/licencee and some material to show what was the rent/licence fee, on the basis of which the Court could direct payment of arrears of rent/licence fee. The aforesaid propositions flow from the phraseology of Order XV-A (1). The Rule expressly employs the expression “such amount as the Court may direct on account fo arrears of rent” or “rent or licence fee claimed in the Suit” as the Court may direct.

26. It, however, does not seem to be necessary that the rent or licence fee ought to be the agreed or indisputable rent or licence fee. The Rule uses the expression, “rent or licence fee claimed in the Suit”. Therefore, where the jural relationship is admitted and there is only dispute regarding the quantum of

⁷ 2005 (3) Bom CR 274.

agreed rent or licensee fee, the Court, on the basis of the claim in the Suit, may determine the rate at which the rent or licence fee be deposited by the Defendant, even where there is no agreed rent or licence fee.

27. The controversy at hand is, however, slightly different. In the instant case, the Plaintiff claims that the Defendant is a gratuitous licensee. The recourse to Order XV-A is made by the Plaintiff on the premise that once the gratuitous licensee is terminated, the Defendant is liable to pay compensation for the occupation of the Suit premises.

28. In the case of **Apsara Development Corporation (Supra)**, this Court considered the sustainability for the claim for compensation under Order XV-A, where the Plaintiff had approached the Court with a case that the Defendant was a gratuitous licensee. After advertng to the provisions contained in the Order XV-A, and relying upon the pronouncements in the cases of **Shreeprasad R Jamdar V Shashikala Prabhakar Nandarni** ⁸and **Dr. Nirmala Sohanlal Pandit Vs Madhu Sudan Kumar Mangalore Jarappa**,⁹ the learned Single Judge of this Court held that the Court would be justified in directing the Defendant, who is stated to be a gratuitous licensee, to pay the interim compensation.

29. In the cases of **Shreeprasad Jamdar (Supra)** after extracting the provisions of Order XV-A , another learned Single Judge has observed that

⁸ AIR OnLine 2019 Bom 481.

⁹ Writ Petition No. 11620 decided on 26th June 2019.

provisions of Order XV-A shows that the Court is empowered to issue direction to the Defendant to deposit such amount as the Court may direct, on account of arrears up to the date of the order. It was not disputed in that case that the Defendant No.1 therein was in the occupation of the Suit premises. Thus, the Court had power to issue direction to Defendant No.1 to deposit such amount as it found reasonable for occupying the Suit premises. In the said case, the learned Single Judge had not delved into the import of the expressions in Rule 1 like “such as the Court may direct on account of arrears” and “rent or licensee fee claimed in the Suit”.

30. In the case of **Dr Nirmala Pandit (Supra)** the learned Single Judge had simply remanded the matter to the Trial Court with a direction that the Application for a direction to Defendant to pay compensation pending the hearing and final disposal of the Suit be treated to be an Application under Order XV-A and be decided in accordance with law.

31. On a careful reading of the aforesaid judgments, especially, the judgment in the case of **Apsara Development Corporation (Supra)** and the judgment in the cases of **Radheshyam (supra)** and **M/s. Dimple Audio Video Pvt. Ltd. (supra)** this Court does not find that there is any conflict in the ratio laid down in those decisions. The decision in the case of **Apsara Development Corporation (Supra)** undoubtedly covers a situation of claim for interim

compensation during the pendency of the Suit instituted for eviction of a gratuitous licensee. Since the said controversy did not arise for consideration in the case of **Radheshyam (supra)** and **M/s. Dimple Audio Video Pvt. Ltd. (supra)**, the decision in **Apsara Development Corporation (Supra)** cannot be said to be in conflict with the earlier decisions and, therefore, bereft of precedential value for not having noticed those earlier decisions.

32. A suit for eviction of the gratuitous licensee does not seem to be completely out of the purview of the provisions contained in Order XV-A. It would be contextually relevant to note that Rule (1) of Order XV-A came to be substituted by the Notification dated 11th January 1990. *Inter alia*, the expression, “In a Suit by a lessor or a licensor against a lessee or licensee as the case may be” came to be substituted for the expression “In a Suit by a lessor for eviction of a lessee”. Rule making authority thus, found it necessary to empower the Court to direct a licensee as well to deposit the licence fee in a Suit instituted by the licensor for eviction, with or without arrears of licensee fee. The term licensee covers in its fold a gratuitous licensee. If the landlord succeeds in demonstrating that the Defendant was a gratuitous licensee and licence has been duly terminated and, yet, such licensee continues to occupy the subject premises, as a matter of principle, the Court cannot be precluded from directing such licensee to deposit the amount towards licence fee as the

Court may find appropriate in a given case. Here the element of discretion becomes critical.

33. On the one hand, the Court cannot proceed to direct the Defendant to deposit the licence fee at the market rate as the Appellate Court would do where it stays the execution of a decree for eviction, after which the possession of the Defendant becomes unlawful, importing the principles in the case of **Atma Ram Properties (P) Ltd (Supra)**. On the other hand, the Court needs to be alive to the fact that the Defendant is in the occupation of the subject premises post alleged revocation of gratuitous licence, without paying any premium or fees for the same. Yet, to hold that the provisions of Rule 1 of Order XV-A do not apply to the case of a gratuitous licensee at all may not be in consonance with the object with which Order XV-A has been inserted.

34. Reverting to the fact of the case at hand, it is pertinent to note that the Trial Court had proceeded on an erroneous premise that it was entitled to award interim mesne profits. The Appellate Bench was justified in interfering with the finding of the Trial Court, on the count of said error in law. However, the view of the Appellate Bench that the provisions contained in Order XV-15A were also not attracted to the facts of the case at hand is also not sustainable.

35. At this juncture the capacity in which the Defendants-Respondents claim to possess the suit premises assumes importance. In the Written Statement, the

original Defendant claimed that initially the suit premises was given to the father of the Defendant by the mother of the Plaintiff under a Leave and Licence Agreement. Compensation was paid at the rate of Rs.350/-. That licence was valid and subsisting on 1st February 1973 and, therefore, Defendant became the tenant in respect of the suit premises. In the year 1975 the mother of the Plaintiff agreed to sell the suit premises for a consideration of Rs.25,000/- out of which Rs. 10,000/- was paid in cash. An Agreement was executed on 18th February 1975. Thereafter original Defendant was paying rent of Rs.125/- to the Plaintiff up to the year 1981. However, the documents evidencing the transaction were forcibly taken away by the Plaintiff.

36. In the backdrop of the aforesaid nature of the defence, which wavered from being a licensee to a protected tenant to being in possession of the subject premises in pursuance of an Agreement for Sale, the Courts below ought to have recorded a *prima facie* finding as to the nature of the jural relationship between the parties. If it was a case of tenancy, what was the agreed rent. If there was no agreement on the rent paid by the tenant, then at what rate the Respondents-Defendants could be directed to pay the rent during the pendency of the Suit. If not, whether the predecessor-in-title of the Respondent-Defendant was a gratuitous licensee. If so, at what rate the Respondent could be directed to pay the compensation for the use and

occupation of the subject premises.

37. Since the learned Judge, Court of Small Causes had not approached the controversy from a correct perspective and in the light of the provisions of the Order XV-A and erroneously proceeded on the premise that he was entitled to award interim mesne profits, the order passed by the learned Judge was justifiably interfered with the Appellate Bench. However, the Appellate Bench was also in error in holding that in the absence of undisputed rate of rent or licence fee, no order could have been passed under Order XV-A. The fact remains that the Respondents-Defendants continue to occupy the suit premises.

38. Hence, this Court considers it appropriate to set aside the impugned order as well as the orders passed by the learned Judge, Court of Small Causes on 16th July 2024 and the first order dated 22nd April 2016 passed by the learned Judge, Court of Small Causes on the Application (Exhibit “9”) and remit the said Application for determination afresh, in the light of the aforesaid observations.

39. Since the Respondents have already deposited a sum of Rs.6,71,981/-, to balance equities, the Court considers it appropriate to direct that 50% of the said amount, along with interest accrued thereon, be returned to the Respondents and the balance 50% of the amount shall remain deposited with

the Court and abide the order which may passed by the leaned Judge on the Application (Exhibit “9”).

40. Hence, the following order :

: ORDER :

(i) The Writ Petition stands partly allowed.

(ii) The impugned order dated 21 December 2021 and the orders dated 16th July 2024 and 22 April 2016 passed by the learned Judge, Court of Small Causes, stand quashed and set aside.

(iii) The application (Exh.9) stands remitted back to the Court of Small Causes for a fresh decision on merits and in accordance with law, after providing an effective opportunity of hearing to the parties.

(iv) Out of the amount of Rs.6,71,981/- and the interest accrued thereon, 50% of the amount be permitted to be withdrawn by the Respondents and the balance 50% shall remain invested with the Court of Small Causes and shall abide the order which may be passed by the Court on the Application (Exhibit “9”).

(v) Rule made absolute to the aforesaid extent.

(vi) No costs.

(N.J.JAMADAR, J.)