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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 902 OF 2025
IN
CIVIL REVISION APPLICATION NO. 483 OF 2011

Ion Exchange Enviro Farms Ltd ...Applicant

In the matter between:

Frick India Ltd ..Rev. Applicant

Versus

Ion Exchange Enviro Farms Ltd and Ors. ...Respondents

Mr. R.M. Hardas i/b Mr. H.K. Menghani for the Applicant in
IA/902/2025.

Mr. Yashpal Jain a/w Ms. Jahnvi Vora for Ori. Rev. Applicant.

CORAM : M.M. SATHAYE, J.
DATE : 28th NOVEMBER, 2025

P.C. :

1. Heard learned Counsel for the parties. Perused the record.
2. This is an application by successful Plaintiff/landlord/lessor to withdraw the amount of interim compensation deposited by the Defendant No.2/sub-tenant in this Court, during pendency of the above Civil Revision Application.
3. The Civil Revision Application was filed challenging the decree of eviction.
4. On 25.09.2017, this Court, based on the law laid down in **Atmaram Properties Pvt. Ltd. v/s. Federal Motors Pvt. Ltd.** [(2005) 1 SCC 705] and **State of Maharashtra and Another v/s. Super Max International Private Limited and Ors.** [(2009) 9 SCC 772] directed the

Revision Applicant to deposit the arrears of compensation @ Rs.1 lakh per month with effect from 01.01.2017. In the said order, in paragraph 7, it was clarified that the determination is only *ad-hoc* and parties were kept at liberty to file appropriate applications, affidavits, valuation reports, documents for determination of reasonable compensation amount. Record further shows that on 11.10.2017, this Court after hearing both the sides, modified the order and reduced the monthly compensation to Rs.60,000/- per month. It is therefore clear that the Revision Applicant, after being at liberty to produce additional material for change in interim compensation, had moved the Court and the Court had reduced the amount. True that, the order dated 11.10.2017 records that the reduction was on the basis of mistaken area and the correct area of suit premises is 1064 sq. ft.

5. Civil Revision Application was heard finally and after hearing both the sides on merits, was dismissed on 18.04.2024 by this Court, thereby confirming the concurrent decree of eviction. The Revision Applicant, carried the matter in the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No. 16155 of 2024 and the Hon'ble Supreme Court by order dated 30.07.2024 dismissed it. The revision Applicant was directed to vacate the suit premises subject to payment of rent and arrears. Therefore the aspect of Revision Applicant's eviction has attained finality.

6. It is not disputed that the present Applicant/Plaintiff has received possession of the suit premises on 31.12.2024 as per direction of the Hon'ble Supreme Court. It is further not in dispute that pursuant to orders of this Court, the Revision-Applicant has deposited the interim compensation amount in this Court till May 2024, which is lying with

the Registry. In these circumstances, the Respondent (Plaintiff) has filed the present application.

7. Learned Counsel for the Applicant has taken the Court to various orders and has submitted that the amount should be permitted to be withdrawn, without prejudice the rights and contentions of the parties that can be decided in the pending Mesne Profits Application No. 83 of 2025 pending in the Small Causes Court at Mumbai.

8. *Per contra*, learned counsel for the Revision Applicant relied on affidavit in reply dated 07.04.2025, which is tendered today. The same is taken on record. He has opposed the prayer of withdrawal contending *inter alia* that there is no adjudication of the alleged mesne profits or compensation and amount that was directed to be deposited in this Court was only ad-hoc. He submitted that since there are no directions issued while disposing of the revision application, about the deposited money and when there is no adjudication by the Court about whether the revision Applicant was lawful sub-tenant or not, the withdrawal can not be permitted.

9. I have considered the submissions. At the outset, it must be noted that the adjudication of the rights between the parties, in as much as, whether the Revision Applicant was lawful sub-tenant or otherwise, cannot be re-agitated in view of the fact that revision application is dismissed on merits and the said order is confirmed by the Hon'ble Supreme Court. The decree of eviction has thus attended finality. The Trial Court, while ordering eviction, has held in paragraph 22 that Applicant / Plaintiff is entitled to mesne profits and inquiry be held. The possession has been already handed over. Mesne profits application is

also pending between the parties.

10. Under Section 2(12) of the Code of Civil Procedure, 'mesne profit' is defined to mean those profits which the person in wrongful possession of the property either actually received or might with ordinary diligence have received with interest on such profit. Admittedly, the claim of the Plaintiff for mesne profits is pending in the Court of Competent jurisdiction as indicated above. The amount which was directed to be deposited in this Court, was under the order of this Court, in which liberty was granted to the Revision Applicant to bring further material before the Court seeking modification. The Revision Applicant has chosen to secure an order on 11.10.2017, based only on consideration of actual area. There is nothing on record to indicate that any other material was brought on record seeking reduction of compensation amount. In such circumstances, the Revision Applicant cannot be heard to say at this stage, that withdrawal should not be permitted because it is not on any basis.

11. Suit premises are 1064 sq. ft of commercial space at Mahalaxmi, Mumbai. In such circumstances, considering that despite decree of eviction was passed sometime in October 2006, the Revision Applicant was in possession of suit premises till 31.12.2024, the Plaintiff needs to be compensated, even during pendency of the mesne profits application, without prejudice. The amount of compensation deposited in this Court can be permitted to be withdrawn by the Plaintiff, subject to undertaking and subject to final outcome of the mesne profits application.

12. The Interim Application is accordingly **disposed of by passing**

following order :

(a) The Applicant / original Plaintiff is permitted to withdraw the amount deposited by Revision-Applicant in this Court, along with accrued interest if any.

(b) Withdrawal to be permitted on condition that the Applicant / Plaintiff files an undertaking in this Court, within a period of 3 weeks from today, stating that (i) the withdrawn amount shall be without prejudice to the rights and contentions of both the sides and (ii) the withdrawn amount shall be subject to adjustment under final outcome of the mesne profit Application No. 83 of 2025 pending in the Small Causes Court at Mumbai and (iii) the withdrawn amount shall be brought back to the Court with interest, as may be directed by the Small Causes Court, Mumbai at the time of final disposal of mesne profit application.

(C) This Court has not expressed any opinion about rival contentions of the parties in the said mesne profit application and it shall be decided on its own merits, in accordance with law.

13. At this stage, learned Counsel for the Revision-Applicant submits that parties are trying to workout the dispute at the stage of mesne profits application without prejudice to its contention.

14. Considering the same, this order shall not take effect for a period of 3 weeks from today.

15. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)