IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 10468 OF 2025
IN
CIVIL REVISION APPLICATION NO. 559 OF 2010

Runwal Developers Private Limited ...Applicant

In the matter between:
Devdut C.H.S. Ltd. ...Rev. Applicant
Versus
Mrs. Silloo Dara Zaiwalla (Nee) Silloo M. Sethna and Ors. ...Respondents

SNEHA NITIN CHAVAN
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Date: 2025.10.17 19:31:49 +0530

WITH
INTERIM APPLICATION NO. 12201 OF 2025
IN
CIVIL REVISION APPLICATION NO. 559 OF 2010

Dr. Behram Merwanji Sethna ...Applicant

In the matter between:
Devdut C.H.S. Ltd. ...Rev. Applicant
Versus
1(d). Runwal Developers Pvt. Ltd. And Ors. ...Respondents

WITH
CIVIL APPLICATION NO. 190 OF 2017
IN
CIVIL REVISION APPLICATION NO. 559 OF 2010

Mrs. Silloo Dara Zaiwalla (Nee) Silloo M. Sethna ...Applicant

In the matter between:
Devdut C.H.S. Ltd. ...Rev. Applicant
Versus
Mrs. Silloo Dara Zaiwalla (Nee) Silloo M. Sethna and Ors. ...Respondents

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Mr. Yusuf Muchhala, Senior Advocate a/w Mr Sageer A. Khan, Ms Insha Shaikh, Mr Aqil Khan, Mohd. Dawood Khan, Ms Sauda Nachan, Tasmiya Siddique, Afsha Khan, Ms Fatima Rumani i/b Judicare Law Associates for Applicant CRA and CAC Nos. 2/2018 & 3/2018.

Mr. Prateek Saksaria, Senior Advocate a/w Mr Pheroze Mehta, Mr Dhiren Durante & Mr Dev Bhankharia i/b Lexicon Law Partners for Respondent No. 1(d) in CRA and for Applicant in I/A No.10468/25 & CAC 190/2017

Mr. V Y Sanglikar for Respondent No. 2 in CRA and for Applicant in I/A No. 12201/2025.

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CORAM : M.M. SATHAYE, J.
DATE : 17th OCTOBER, 2025

P.C. :

1. Heard learned counsel for the parties. Perused the record.

2. The dispute pertains to eviction of the Revision Applicant - Devdut CHS Limited from the suit premises which is land admeasuring 1719 sq. yards bearing Survey No. 2034 (part) situated at Bandra, Bombay Suburban District along with society building standing thereon.

3. Original Respondents - Mrs. Silloo Dara Zaiwalla (Nee) Silloo M. Sethna and Dr. Behram N. Sethna filed R.A.E. & R. Suit No. 633/1708 of 1989 seeking eviction of the Applicant-Society from the suit premises on various grounds under provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Bombay Rent Act' for short). By Judgment and Decree dated 31.10.2007, the Court of Small Causes at Bombay dismissed the suit. Only Plaintiff No.1-Mrs. Silloo Dara Zaiwala challenged the said decree of dismissal by filing Appeal No. 21 of 2008, before the Appellate Bench of Small Causes

Court, Bombay. By the impugned Judgment and Decree dated 03.07.2010, the said Appeal has been allowed, setting aside dismissal of the suit, and decreeing the same, directing the Applicant-Society to deliver vacant and peaceful possession of suit property. The Applicant-Society is directed to pay arrears of rent from April 1987 to March 1989 amounting to Rs.7,800/- and arrears of increase N.A. Taxes to the tune of Rs.5,702/- to Plaintiff.

4. It is important to note that Enquiry regarding future mesne profit is ordered as per Order XX Rule 12(1) of Code of the Civil Procedure, 1908 ('CPC' for short).

5. The Applicant-Society filed the above Civil Revision Application challenging the decree of eviction.

6. On 11.10.2010, this Court admitted the revision application and following order came to be passed.

> "1. Heard learned counsel appearing for the Applicant and the learned Senior Counsel for the 1st Respondent.
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> 2. Arguable questions are raised. Rule. Advocate on record for the 1st Respondent waives service. Though the execution of the decree for possession will have to be stayed, the applicant will have to deposit a reasonable amount by way of compensation as a condition for grant of stay. For determination of reasonable compensation, the parties will have to be heard.
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> 3. Hence, Civil Revision Application shall be placed on board for hearing as to interim relief on 27th October, 2010. In the meanwhile, parties are free to file material on record as regards reasonable amount of compensation payable. Decree for possession shall not be executed till the rule on interim relief is

heard."

7. On 10.12.2010, the Respondent was granted time to place on record a valuation report and it was kept open for the Applicant-Society to file valuation report on record.

8. On 01.02.2011, this Court, after hearing both sides, was of the opinion that the rate of monthly compensation is seriously contested and an Enquiry would be required to determine what would be a fair amount of compensation, in the light of affidavits and valuation report and other relevant material. Considering the paucity of time, this Court felt that it is not possible to hold an Enquiry and matter was sent to Trial Court to hold an Enquiry and submit a report, as to what would be the fair amount of compensation which the Applicant would be required to pay as a condition for stay of the eviction decree, in the light of decision of Hon'ble Supreme Court in the case of **Atma Ram Properties (P) Ltd. v/s. Federal Motors (P) Ltd. [(2005) 1 SCC 705].** The affidavits filed by the parties along with valuation reports were sent to the Trial Court and parties were directed to appear before the Trial Court. Liberty was granted to file additional material and Trial Court was directed to submit report expeditiously.

9. It was ordered under Order dated 01.02.2011, that till the report of the Trial Court is received, the Applicant-society shall continue to pay the compensation at agreed rate of rent.

10. On 03.11.2014, the Court of Small Causes, after hearing both sides and considering the material produced on record, issued an Enquiry report indicating fair valuation of land and building, holding

that fair market rent/compensation of suit property (land with building) is Rs.9,05,958/- per month.

11. Since, the Applicant-society did not pay the interim compensation as per report, Plaintiff No.1 Ms. Silloo Dara Zaiwala filed Civil Application No. 190/2017 on 10.04.2017 praying that the appeal be dismissed with costs for non compliance of order dated 01.02.2011, or in the alternative, to direct the Society to deposit in this Court the compensation amount as per report of the Small Causes Court from date of filing of suit (April 1989) or from 03.07.2010 i.e. date of impugned eviction decree.

12. The Society filed Civil Application No. 3 of 2018 on 18.09.2017 with a prayer to quash and set aside the aforesaid Enquiry report of the Small Causes Court and decide any such lower and reasonable amount that the Applicant may be directed to pay as and by way of interim compensation during pendency of the Revision Application. The Applicant prayed for stay to the effect and operation of Enquiry report of the Small Causes Court.

13. Plaintiff No. 1 Mrs. Silloo expired on 15.08.2017 and in December 2017, the legal heirs of Respondent No.1 (Respondent Nos. 1(a) to 1(c) daughters) were brought on record.

14. On 28.08.2019 all parties agreed that they will argue the matter on 07.10.2019 and the matter was posted at 3.00 p.m. On 07.10.2019, learned counsel for the parties were heard at length and the matter was posted on 14.10.2019 at 3.00 p.m. On 15.10.2019, the parties requested to keep the matter beyond vacation as part heard. On

26.11.2019, the matter was released from the caption of 'part heard'.

15. Thereafter, Covid-19 pandemic hit and it appears from the record that the Revision Application and Interim Applications remained pending.

16. Recently, in June 2025, a Developer has been impleaded as Respondent No.1(d) under order dated 20.06.2025. The Developer claims to have purchased the entire property under registered document dated 08.12.2023.

17. The recently added Developer then filed Interim Application No. 10468 of 2025 praying for recall of stay order dated 11.10.2010 (which in other words means a prayer for vacating interim stay). The Developer has prayed in the alternative for an order/direction to the Applicant-Society to deposit the interim compensation amount as per Enquiry report of the Small Causes Court from date of stay order dated 11.10.2010 till 16.07.2025 claiming an amount of Rs. 16,05,29,913/- and to continue to deposit the same each month. Same prayer is made during pendency of the application also. It is material to note that this application by the Developer seeks an order for deposit of interim amount in the alternative to its prayer of vacating stay.

18. Respondent No.2 (Dr. Behram Sethna) has also recently filed Interim Application No. 12201 of 2025 on 24.09.2025, praying that stay order dated 11.10.2010 be vacated and Applicant-Society be directed to handover the possession of the suit property to the Plaintiff No.2. A further prayer is made seeking direction to the Applicant-Society to pay the arrears of interim compensation. He has taken a stand that pursuant

to direction of the Trial Court to conduct enquiry into mesne profits, enquiry report dated 03.11.2014 has been issued. He has claimed 50% entitlement in interim compensation amount. He has also taken a stand that since his sister Silloo has been deleted and there is no order of Court conferring benefit upon the Developer, he alone is entitled to all benefits of compensation and decree for possession.

19. Learned senior Advocate Mr. Saksaria for the Applicant/ Developer submitted with all the vehemence at his command, that the initial order of stay dated 11.10.2010 is a conditional order and the same is passed on condition of the Society depositing reasonable amount. He submitted that by subsequent order of 01.02.2011, this Court sent the parties to the Small Causes Court and after considering rival submissions, the Enquiry report dated 03.11.2014 has been filed in this Court. He submitted that the said report being filed pursuant to order of this Court, it cannot be challenged by filing civil application by the Society. He submitted that paragraph 6 of order dated 01.02.2011 clearly shows that the Society can continue to pay compensation at contractual-rate 'only till the report is received by this Court', which has happened long ago in November 2014. Therefore, it is submitted that, the Society must deposit the interim compensation decided under the Enquiry report.

19.1. He submitted that if the amount is calculated as per Enquiry report, as on today, the Society is under obligations to deposit crores of rupees for continuation of interim stay. He submitted that in any case, assuming that the interim stay is vacated, still the liability to pay interim compensation as per Enquiry report for the period of occupation cannot be escaped. Relying on the Judgment of **Atma Ram Properties**

(supra), he submitted that while considering the grant of interim stay, the Court must remember that it is depriving a successful landlord of the fruits of a decree by postponing execution of eviction order.

19.2. Relying on the judgment of Delhi High Court in the case of **Sheikh M. Maroof v/s. Phoenix ARC Pvt. Ltd. And Ors. [2021 SCC Online Del 2552],** it is submitted that the Court having competence to pass an conditional stay order, is entitled to take notice of its disobedience and in a given case, even 'drastic step' of denying hearing to the party disobeying the order, may be taken in the larger interest of justice. Relying on the Judgment of the Hon'ble Supreme Court in **Celir LLP v/s. Sumati Prasad Bafna and Ors [2024 SCC Online SC 3727],** it is submitted that if judicial orders are openly flouted, then such contemptuous conduct of Society, frustrating Court proceedings, must be taken note of and the 'drastic step' of denying hearing to the Society must be adopted. He also submitted that unless the breach is purged, the Society should not be heard.

19.3. He submitted that since the Society has not deposited any amount as per the order of this Court dated 11.10.2010 read with order dated 01.02.2011 read with Enquiry Report dated 03.11.2014, the Society should not be heard even for its challenge in the parent proceedings viz. Civil Revision Application challenging the impugned decree of eviction. He submitted that if the conduct of the Society of not depositing interim compensation is tolerated, then it would amount to unconditional stay being enjoying by the society.

20. Learned counsel Mr. Sanglikar appearing for Applicant Dr. Sethna submitted that so far as the prayer for vacating interim stay

and / or direction to deposit interim compensation is concerned, he is supporting the developer. He submitted that the Society has participated in the Enquiry as directed by this Court and since the Enquiry was under order of this Court, it cannot be challenged by filing civil application. He submitted that when the writ petitions of earlier years since 1998-99 are pending there is nothing special about the present civil revision application to be taken up for hearing immediately. He submitted that the Society and its member have been dishonest, in as much as, they are enjoying the possession and all the fruits thereof, however, they are not ready to deposit the interim compensation as directed in the Enquiry report.

21. Mr. Muchhala, learned senior Advocate appearing for the Society, submitted that the condition that can be imposed under Order XLI Rule 5 of the CPC has to be a reasonable condition, even as per the law laid down by the Hon'ble Supreme Court in **Atma Ram Property (supra)**. He submitted that the jurisdiction being exercised while passing a conditional stay order is an equitable jurisdiction and therefore, the conditions cannot be punitive in nature. He submitted that the Enquiry report submitted by the Small Causes Court is 'only a report' and there is no adjudication by this Court about what is reasonable interim compensation, as on today. He further submitted that in any case, the conclusion drawn by the Small Causes Court in Enquiry report has been challenged by filing civil application and therefore it cannot be said that the Society has flouted the condition of interim deposit deliberately. He submitted that no contempt proceedings are filed against the Society and therefore, unless the Court comes to the conclusion that the Society is guilty of contempt of Court, hearing cannot be denied to it, as suggested by the developer.

22. I have carefully considered the rival submissions and perused the record.

23. At the outset, it is important to note that the concept of 'mesne profits' and the concept of 'deposit or payment of interim compensation as a condition precedent for stay' are two different concepts having two distinct origins. The adjudication of mesne profits is provided under Order XX Rule 12 of the CPC which provides for an inquiry as to mesne profits. The concept of interim compensation at market rate originating from the judgment of Hon'ble Supreme Court in **Atma Ram Property (supra)**, is necessarily under Order XLI Rule 5 of CPC. The jurisdiction exercised under Order XLI Rule 5 is about grant of stay to the impugned decree. In paragraph No.16 of the said judgment, the Hon'ble Supreme Court has held as under:

> "16. We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy."

24. In paragraph 18 and 19 of the said judgment the Hon'ble Supreme Court has concluded, as under:

> "18. That apart, it is to be noted that the appellate court while exercising d jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for

> grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits e of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.
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> 19. To sum up, our conclusions are:
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> (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 insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.
>
> x
> x
> x"
>
> [emphasis supplied]

25. It is therefore clear that a tenant who suffers a decree of eviction can continue his fight before the superior forum and his right to continue his challenge as provided under law is not curtailed by non-compliance with the condition imposed for interim stay. It is therefore clear that the jurisdiction being invoked in above interim/civil applications, permits the Court to put the Society on reasonable terms. It is also clear that the terms shall have to be reasonable. It is also clear the mesne profits 'may be equivalent to market rent', meaning thereby that 'it may not be', for which adjudication by this Court is necessary.

26. When the first two orders dated 11.10.2010 as well as 01.02.2011 were passed, the predecessor of the Developer was heard. After the Enquiry report was submitted in November 2014, the predecessor of the developer i.e. Plaintiff No.1 has not moved any application till filing of Civil Application No.190 of 2017. The other interim applications viz. by the developer and Plaintiff No.2 are as recent as filed in July 2025 and September 2025 respectively. Prior to filing Civil Application No.190 of 2017, the insistence that the condition of deposit must be implemented, does not seem to have been pressed. Record also shows that in August 2019 and October 2019, the parties had argued the revision application and even request was made to keep the matter part-heard. In such circumstances, a stand taken today by the developer, after its recent entry in the litigation that the Society should not be heard at all, even in main revision application, cannot be accepted. Neither any of the Plaintiffs nor the Developer has filed any contempt proceedings against the Society. Obviously, therefore, there is no occasion for this Court to conclude about any contempt being committed by the Society.

27. Also, it is important to note that Civil Application No. 3 of 2018 filed by the Society is pending. In the said application, the Society is praying to quash and set aside the Enquiry report dated 03.11.2014. One more prayer is made to decide lower and reasonable amount of interim compensation during pendency of the Civil Revision Application. To this application, Respondent Nos. 1a to 1c have filed reply, however the Developer or Plaintiff No.2 has not filed reply. Presently, no submissions are advanced on merits of said Civil Application and what is submitted is that the Enquiry report cannot be challenged by filing Civil Application. Fact remains that decision on

challenge to the said Enquiry Report, as raised in Civil Application No. 3 of 2018, remains pending. If and when the said Civil Application is decided on merits, the contention whether it is maintainable or not will be considered, apart from other contentions on merits. When adjudication on challenge to the amount of interim compensation is pending, the society cannot be directly held in contempt.

28. The drastic step as suggested by learned counsel for the Developer of denying hearing to the Society, on the ground that it has not deposited interim compensation as per earlier orders, cannot be resorted to in the facts and circumstances of the present case. In my view, no larger interest of justice is shown to have been involved. Just because the Developer is recently involved in the litigation, the interest of justice cannot become larger.

29. The Applicant- Society has 17 residential units with a garage. Under the impugned judgment and decree itself, an inquiry regarding future mesne profits is ordered under Order XX Rule 12(1) of CPC. This inquiry will take its course independently, and effect of the said Enquiry Report (submitted under order of this Court under Order 41, Rule 5 of CPC) thereon shall be considered in accordance with law.

30. Admittedly, the Society has not deposited any interim compensation as provided under orders dated 11.10.2010 and 01.02.2011. Record indicates that the Society was called upon to make deposit, and copies of the correspondence to that effect is produced on record in Civil Application No.190 of 2017, showing that Plaintiff No.1 was demanding the amount of interim compensation as determined by the said Enquiry Report dated 03.11.2014.

31. Learned counsel Mr. Muchhala on instructions submitted that the Society is ready to deposit Rs.15 lakhs in the Court. This offer of Rs.15 lakhs has been strongly opposed by learned counsel for the Developer, calling it 'a pittance' considering crores of rupees calculated as per the figures in the said Enquiry Report and considering a period from October 2010 till today. Notwithstanding the calculation of figures, the legal effect of not complying with a condition imposed upon a party for grant of stay, can always be an order vacating the interim stay.

32. It must be noted that **Atma Ram's case (supra)** is further considered by the Hon'ble Supreme Court (3 Judge's Bench) in **State of Maharashtra Vs. Super Max International Pvt. Ltd. [(2009) 9 SCC 772]** and has concluded as under :

> "77. In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act it is open to the appellate or the Revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount."
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> [emphasis supplied]

33. Keeping in mind the above principle, in my view unless there is clear adjudication about reasonable interim compensation amount, the prayer for direction to deposit the interim compensation as per the said Enquiry Report, can not be granted at this stage when

adjudication of Civil Application No. 3 of 2018 is pending, as explained above.

34. The prayer of not hearing the Society at all, remains within the discretion of the Court. When the effect of non deposit of compensation is already available i.e. vacating stay, which is also prayed by the Developer and Plaintiff No. 2, it is not necessary to take 'a drastic step of barring the Society from hearing at all'.

35. Since this Court is not hearing any contempt petition, the observations in the judgment of **Celir LLP (supra)** will not help the Developer. Also in **Celir LLP**, the Hon'ble Supreme Court was considering the dispute between the borrower, the bank and the auction purchaser under the provisions of SARFAESI Act and the considerations involved there, were completely different. In the present case, the Court is considering the dispute between landlord and tenant where the society / tenant is claiming statutory protection under Bombay Rent Act. Therefore this is not a fit case to hold that the Applicant- Society cannot be heard at all, either in main civil revision application or in pending applications.

36. In the aforesaid facts and circumstances, **above applications are disposed of** by passing following order :

(A) The Applicant- Society is not entitled for continuation of the interim stay since it has not deposited any interim compensation either as held under the Enquiry report or even part of it. Therefore, the interim stay dated 11.10.2010 stands vacated.

(B) The Applicant- Society shall be heard on merits in main

Civil Revision Application and in pending Civil Application No. 3 of 2018.

(C) Place Civil Application No. 3 of 2018 for hearing on 10.11.2025.

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

(M.M. SATHAYE, J.)