

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12428 OF 2025
IN
FIRST APPEAL NO. 513 OF 2022

J.M. Financial Limited ...Applicant

In the matter between:

Mr. Abbas Abdulali Patel and Ors. ...Appellants

Versus

J.M. Financial Limited ...Respondent

Ms. Siddhima Kotak a/w Mr. Arpit Kusum Ashok for the Applicant and original Respondent.

Mr. Joel Carlos a/w Dhaval Patil with Arshaan Lentin i/b M/s. K. Ashar & Co. for Respondent in IA and Original Appellants in FA.

CORAM : M.M. SATHAYE, J.
DATE : 21st NOVEMBER, 2025

P.C. :

1. This is an application filed by Respondent/Defendant in the appeal, seeking following prayer :

“a) Direct the Appellants to pay interest @ 24% p.a. (or such rate as this Hon’ble Court deems fit and reasonable) on the sum of Rs.1,28,51,512/- from 16th September 1997 till the date of actual payment / realization (Kindly note that this amount of the Security Deposit is in accordance with the refund of Security Deposit amount awarded by the Hon’ble City Civil Court vide its order dated 23rd February 2017)”

2. Few facts necessary for disposal of this application are as under. The Appellants/Plaintiffs are owners of the suit premises. They filed Suit No. 3491 of 2011 (High Court Suit No. 923/2011) for recovery of possession based on title against present Applicant. The

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issues involved in the said suit are regarding - (i) leave and license agreement dated 15.09.1994 (between one Mr. Dayabhai Patel (**said Dayabhai**) and Applicant, being binding on the Appellants, (ii) whether the surrender deed dated 27.11.2007 by the legal heirs of the said Dayabhai was legal and valid and (iii) whether the Applicant is a trespasser. Holding all these issues in negative, the suit has been dismissed. However, operative part of the impugned judgment and decree dated 23.02.2017 provides that 'the present Appellants at liberty to deposit the security amount' and that after deposit of such security amount, the present Applicant shall deliver possession of the suit premises. The appeal is already admitted and the same is pending for final disposal.

3. Learned Counsel for the Applicant made following submissions :

3/1. That the suit premises was initially held by said Dayabhai as tenant of the Appellants, who inducted the Applicant under leave and license agreement dated 15.09.1994, with the permission of the Appellants/owners under written communications dated 13.09.1994.

3/2. That this leave and license agreement, as is clear from its recitals, was executed with a term that on expiry of license or sooner determination, if the licensor (said Dayabhai) is unable to refund the security deposit amount (SD amount) for any reason, the licensee (present Applicant) is not required to handover possession of the premises and shall continue to occupy the same without paying any compensation, till such time the security deposit is refunded.

3/3. That in July 1998, the Applicant had filed Suit No. 2934/98 against the said Dayabhai for refund of SD amount with interest @ 24% per annum. This Court by interim order dated 02.02.2001 had directed

the said Dayabhai to deposit the SD amount with 18% p.a. interest. The said suit was compromised under the Consent Terms dated 10.09.2001, where said Dayabhai agreed to refund the SD amount and the Applicant agreed to handover possession and the claim of interest coupled with claim of compensation was referred to a sole Arbitrator.

3/4. That said Dayabhai did not act as per the Consent Terms. Various correspondences ensued, however the Consent Terms remained unexecuted.

3/5. That said Dayabhai expired in 2006 and his relative approached the Applicant with an offer to pay certain interest. This offer did not fructify.

3/6. That on 27.11.2007, the legal heirs of said Dayabhai entered into a surrender deed with the present Appellants/Owners in an attempt to defeat the Applicant's rights. It is submitted that this deed of surrender has a recital where actual possession of the Applicant is acknowledged. It also refers to only symbolic possession being handed over to the Appellants/owners.

3/7. That thereafter, even the present Appellants had offered to pay SD Amount along with certain interest and counter-offer was given, however the parties could not agree and the situation continued as it is.

3/8. The Appellants thereafter filed a suit in the Small Causes Court (T.E. & R Suit No. 59/75 of 2009) against the Applicant which was withdrawn later on, citing incorrect legal advise. Thereafter, the present suit has been filed.

3/9. Relying on various communications/letters and recitals in the document, it is the submitted that the Applicant is entitled to retain the possession till the security deposit is returned to them with interest. That documents on record clearly indicates that offers were made to resolve the issue of SD amount with interest. That suit premises are

simply lying vacant and are in a state of waste and therefore if the security deposit is returned with interest, the Applicants are willing to handover possession.

3/10. It is then submitted that though the decree only provides that the Plaintiffs are at liberty to deposit the security amount, it is 'a direction to the Plaintiffs' to do so. That since in paragraph 77 of impugned Judgment, it is already observed by the Trial Court that the security deposit amount should carry interest, the absence of direction regarding interest in the operative part was an inadvertent mistake, about which the Applicant did not receive proper legal advice. That what can be gathered from paragraph 77 is that even the Trial Court has concluded that recovery of possession is connected with refund of security deposit with interest. It is submitted that the concerned Advocates of the Applicants ought to have sought clarification from the Trial Court about absence of any direction regarding interest. However, it is urged that for the mistake of the Advocate, party should not suffer. A judgment in the case of **Rafiq and Ors v/s Munshilal and Ors [AIR 1981 SC 1400]** is relied upon. Provision of Section 3(a) of the Interest Act, 1978 is also pressed into service to contend that when there are obligations to pay money, the interest component is necessary to be considered.

4. Learned Counsel for the original Appellants, on the other hand, submitted as under.

4/1. That the amount of security deposit was never paid to the Appellants and it was paid to said Dayabhai.

4/2. That there are no proceedings in which there is adjudication about Appellants' liability to pay, if any.

4/3. That Appellants were not party to the suit which was compromised by the Applicant with said Dayabhai and therefore, the

Applicant has to blame itself, if the compromise has not been executed.

4/4. That in the present suit, there is no counter-claim by the Applicant, also there is no cross appeal/cross objections. Therefore Applicant can not demand recovery of security deposit with interest by way of interim relief in their appeal.

5. I have considered the rival submissions and perused the record with the assistance of the learned Counsel for the parties.

6. At the outset, it is necessary to note that suit is not filed by the Applicant and the Applicant has admittedly not filed any counter-claim. The suit is for recovery of the possession from the Applicant. The Applicant has defended it on merits. There is no direction under impugned decree to the Appellants to deposit or pay the security deposit amount. What is contemplated is that the Plaintiffs (Appellants) are 'set at liberty' to deposit the amount. In such circumstances, the Applicant has neither claimed recovery of any amount nor is there any decree in favour of the Applicant. The impugned Judgment and decree, as it stands, has been accepted by the Applicant as the present appeal is filed by the Appellants and not by the Applicant.

7. In such circumstances, when there is no adjudication as to whether the Appellants are liable under law to pay to Applicant, this Court fails to understand under what provision, the Applicant can seek direction to the Appellants for payment of security deposit with interest. Merely because the surrender deed makes a reference to the Applicant being in possession, it cannot be said that the Appellants can be directed to pay any amount as demanded by the Applicant. As rightly pointed out, learned Counsel for the Appellants, there is no adjudication

between the parties about recovery of security deposit with interest or otherwise.

8. The argument about mistake of the advocate is thoroughly misconceived and it is only stated to be rejected. If the Applicant was not satisfied with the impugned Judgment and Decree, it could have challenged the same. However, as on today, there is no cross appeal or cross objection filed challenging the decree.

9. The argument that 'liberty given' to Appellants under clause 3 of the operative part of the impugned Judgment, amounts to 'a direction' and it can be construed as 'Applicant's entitlement' of recovery, is again thoroughly misconceived and cannot be accepted.

10. In the aforesaid facts and circumstances, since there is no adjudication about entitlement of the Applicant for recovery of security deposit with interest or otherwise vis-a-vis the Appellants, it is not possible to entertain the prayer for directing the Appellants to pay any amount at interim stage.

11. At this stage, learned counsel for the Applicant has invited the Court's attention to a pending Civil Application No. 2330 of 2018 filed by the Appellants, which has prayer clause (a) which reads as under:

"a) That this Hon'ble Court be pleased to direct the Respondent herein to handover the suit premises to the Applicants herein on such terms and conditions as this Court may deem fit and proper."

She contends that if this prayer is to be considered (direction to the Applicant to hand over possession), then the prayer in

the present application and consideration of return of security deposit with interest is imperative. *Prima facie*, she is right. Learned Counsel for the Appellants, on a query by the Court, submitted that the Appellants are not pressing this prayer for the time being.

12. Indeed, if at the time of final hearing of the appeal, the Court considers the aspect of handover over of possession or directs any recovery of possession from the Applicant, then the aspect as to payment of security deposit along with interest or otherwise will have to be considered on merits and the Applicant shall be at liberty to raise all grounds in that regard by filing additional affidavit to CA No. 2330 of 2018, if necessary, in accordance with law.

13. Considering the order dated 12.01.2024 passed while admitting the appeal, it is re-iterated that prayer clause (a) of CA No. 2330 of 2018 shall be considered along with appeal, at the time of final hearing.

14. With the aforesaid observations, Interim Application is **rejected and disposed of.**

(M.M. SATHAYE, J.)