



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8537 OF 2023

Safset Agencies Private Ltd.  
a Company registered under the  
Companies Act, 1956, having its  
registered office at FGF Centre,  
Commercial Union House,  
3<sup>rd</sup> Floor, Wallace Street, Fort,  
Mumbai – 400 001.

....**Petitioner**

**-Versus-**

- 1 Riddhi Rahul Kumar Gosalia  
Age 66 years, Occ. Investment & Finance,
- 2 Nyuti Rahul Kumar Gosalia  
Age 43 years, Occ. Student
- 3 Dhvani Rahul Kumar Gosalia  
Age 39 years, Occ. Hair Stylist

All being partners of M/s. Gosalia  
Enterprises, A partnership firm,  
registered under Partnership Act,  
1932 having its office at 105/29,  
2<sup>nd</sup> Floor, Bombay Samachar Marg,  
Mumbai – 400 023.

....**Respondents**

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**Mr. Aspi Chinoy, Senior Advocate and Mr. G.S. Godbole, Senior Advocate**  
*with Mr. Gaurav Mehta i/b Bachubhai Munim & Co. for the Petitioner.*

**Mr. Vineet Naik, Senior Advocate with Mr. Anand Gandhi, for the**  
*Respondents.*

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**CORAM : SANDEEP V. MARNE, J.**

*Reserved On : 10 September 2024*

*Pronounced On : 27 September 2024.*

## **JUDGMENT :**

### **A. THE CHALLENGE**

1) The Petition raises issue of permissibility for Appellate Court to direct deposit fair market rent as a pre-condition for grant of stay to the eviction decree in respect of transaction of licence, where the licence fees as well as damages are contractually agreed upon between the parties. The Petition raises challenge to the order dated 5 June 2023 passed by Appellate Bench of Small Causes Court by which execution and operation of the eviction decree is stayed subject to Petitioner depositing the entire decretal amount at the rate of Rs.6,00,000/- per month from the date of termination of the licence till the date of the decree and compensation at the rate of Rs.17,95,000/- per month from the date of decree till decision of the Appeal. It is Petitioner's contention that the principle for deposit of fair market rent expounded by the Apex Court in its judgment in **Atma Ram Properties (P) Ltd.**<sup>1</sup> cannot be invoked in respect of eviction decree passed in a suit between licensor and licensee, where contractual amount of licence fees as well as damages/compensation is agreed upon. It is contended that in a suit filed against licensee for recovery

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<sup>1</sup> Atma Ram Properties (P) Ltd. Versus. Federal Motors (P) Ltd. (2005) 1 SCC 705.

of possession, the possession becomes unlawful not from the date of decree (as in the case of protected tenant) but the same becomes unlawful from the date of termination of license and therefore the Court cannot split the period of unlawful occupation by directing deposit of contractual rent and damages up to the date of decree and fair market rent post the date of the decree.

## **B. FACTS**

2) Considering the limited controversy, which this Court is tasked upon to resolve, it is not necessary to record facts in detail. However brief factual background, shorn of unnecessary details, in which the issue arises for determination in the petition is being narrated. Petitioner is a Private Limited Company and is in the business of dealing in art. Respondents claim to be owners of the building named “Bharat Chambers” situated at 22/26, K Dubash Marg, Rampart Row, Fort, Mumbai – 400 023. A Leave and Licence Agreement dated 25 September 2006 came to be executed between Respondents as Licensors and Petitioner as Licensee in respect of the ground, first and second floor of the building Bharat Chambers admeasuring 534.66 square meters equivalent to 5755 square feet carpet area (**suit premises**). Under the said Agreement, license was granted in respect of the suit premises for a period of 60 months commencing from 25 September 2006 and ending on 24 September 2011 on payment of license fees of Rs.3,00,000/- per month.

3) According to Petitioner, the real intention between the parties was to create tenancy in respect of the suit premises and Petitioner was to be treated as monthly protected tenant therefore

Petitioner deposited an amount of Rs. 1,00,00,000/- with Respondents, which is described in the Leave and Licence Agreement as interest free security deposit. It appears that dispute arose between the parties about payment of license fees and accordingly Respondents sought to terminate the license agreement by notices dated 17 January 2009, 24 February 2009 and 30 March 2009 and called upon Petitioner to handover vacant possession of the suit premises. In the above background, Petitioner filed RAD Suit No. 766 of 2009 against Respondents seeking declaration of tenancy in respect of the suit premises. Petitioner also filed RAN Application No. 19/SR of 2009 seeking fixation of standard rent in respect of suit premises. Respondents, on the other hand, instituted L.E. & C. Suit No.83/109 of 2009 against Petitioner seeking recovery of possession of the suit premises together with arrears of monthly compensation as well as damages and municipal taxes. All the three suits came to be decided by common judgment and decree dated 17 December 2022 by the learned Judge of the Small Causes Court. RAD Suit No.766 of 2009 and RAN Application No.19/SR of 2009 filed by the Petitioner have been dismissed. L.E. & C. Suit No.83/109 of 2009 is decreed directing Petitioner to vacate and handover possession of suit premises to the Respondents. Petitioner is further directed to pay compensation at the rate of Rs.6,00,000/- per month from 1 May 2009 till vacation of the suit premises against refund of security deposit after deducting the arrears. Petitioner is further directed to pay municipal taxes together with interest and penalty as well as all other taxes imposed by Central or State Government or local authority.

4) Petitioner has preferred Appeal No.31 of 2023 challenging the decree passed in L.E. & C. Suit No.83/109 of 2009 before Appellate

Bench of Small Causes Court. In the Appeal, Petitioner filed application at Exhibit-A seeking stay to the execution of the decree dated 17 December 2022 during pendency of the Appeal. By impugned order dated 5 June 2023, the Appellate Bench of Small Causes Court has allowed application at Exhibit-8 filed by Petitioner by staying the operation of the decree during pendency of the Appeal subject to Petitioner deposit decretal amount of Rs. 6,00,000/- per month from the date of termination of license till the date of decree and further compensation at the rate of Rs. 17,95,000/- per month from the date of decree till the decision of the Appeal. Petitioner is aggrieved by order dated 5 June 2023 passed by the Appellate Bench of Small Causes Court to the extent of making it liable to deposit the aforestated amounts and has accordingly filed the present Petition.

5) By order dated 20 July 2023, this Court extended the time to deposit the amount as directed by the Appellate Bench till 10 August 2023. The said order has been extended from time to time and continues to operate till date.

### C. SUBMISSIONS

6) Mr. Aspi Chinoy, the learned Senior Advocate appearing for Petitioner would submit that the Judgment in **Atma Ram Properties (P) Ltd.** (supra) holds that once the tenant/lessee's possession becomes wrongful, the tenant/lessee is liable to pay damages for continued use and occupation of property for any period thereafter, at the rate the landlord could have let out the premises if there had been no tenant. That the Appellate Bench has erred in applying principle of **Atma Ram**

**Properties (P) Ltd.** to the suit filed for recovery of possession of premises from a licensee. He would submit that the principles enunciated by the Apex Court in **M/s. Atma Ram Properties (P) Ltd.** essentially apply only to the suit filed for recovery of possession of premises from a tenant protected by Rent Control Legislation. That in respect of a protected tenant, who enjoys protection under Maharashtra Rent Control Act 1999 (**MRC Act**) possession becomes unlawful only when decree for eviction is passed. However, in respect of a licensee, the possession becomes unlawful from the date of termination of license. That therefore while there can be no enquiry into *mesne* profits from the date of termination of tenancy in case of a protected tenant, such enquiry can be conducted and a licensee can be made liable to pay *mesne* profits from the date of termination of license. That the Apex Court has noted this position that in case of a tenancy governed by Rent Control Legislation, there is a vast difference between rent payable during currency of tenancy and fair market rent in respect of the tenanted premises. In **Atma Ram Properties (P) Ltd.**, the Apex Court has declared law for making a protected tenant liable to deposit fair market rent as a pre-condition for passing of an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908 (**the Code**). Unlike tenancy protected by Rent Control Legislature, in case of a license, the license fees or compensation agreed between the parties is almost contemporaneous with the fair market rent and that therefore the principle of **Atma Ram Properties (P) Ltd.** cannot be invoked when eviction decree is sought to be stayed by a licensee before the Appellate Court.

7) Mr. Chinoy would submit that if the ratio of **Atmaram Properties (P) Ltd.** is to be made applicable to case of a licensee, the same would be applicable from the date when continued possession of the licensee became wrongful i.e. the date when license expired/was terminated. That fair return to the landlord/licensor would have to be computed not from the date of decree/order for eviction of licensee but on and from the date of termination/expiry of the license. That there is no rational basis for making **Atmaram Properties (P) Ltd** principle applicable from the date of decree for eviction as the same would be contrary to the underlying basis of the judgment. In the present case, Trial Court has consistently with Section 24(2) and Clause 9 and 28 of the License Agreement directed Defendant to pay compensation @ Rs.6,00,000/- per month from 1 May 2009 till vacation of the premises to the Plaintiff. In view thereof, no question arose of any further inquiry into the mesne compensation and no such order for mesne compensation has in fact been prayed for/sought.

8) Mr. Chinoy would further submit that the Appellate Bench of Small Causes Court has committed an obvious error in splitting the period of alleged unlawful possession of suit premises by Petitioner and making it liable to pay contractual amount of compensation/damages from the date of termination of license and market rent of Rs.17,95,000/- from the date of the decree. He would submit that since market rent becomes depositable on account of possession of premises becoming unlawful as per the judgment in **Atma Ram Properties (P) Ltd.**, the licensee would then be required to pay market rent from the date of termination of the license and not from the date of decree. That it is impermissible to split the period of

alleged unlawful possession by directing part of it being governed by contractual arrangement between parties while leaving the other part to be governed by principle under **Atma Ram Properties (P) Ltd.** He would therefore submit that since uniformity needs to be maintained in respect of entire period of alleged unlawful possession, the Appellate Bench ought to have directed deposit of contractual damages of Rs.6,00,000/- from the date of termination of license till decision of the Appeal. That if the Appellate Court held that the ratio of **Atmaram Properties (P) Ltd** displaced the provisions of Section 24(2) and the contractual clause embodying the same, the Court could have ordered the said ratio to be made applicable from 1 May 2009 i.e. when after termination of the license, the Petitioners continued occupation became unlawful till the disposal of appeal and delivery of possession.

9) Mr. Chinoy would rely upon provisions of Section 24 of the MRC Act under which the damages equivalent to twice the amount of license fees is statutorily fixed in respect of licensed premises for residential purposes. That in respect of premises governed by Section 24 of the MRC Act, licensee in respect of residential premises is liable to pay/deposit only double the amount of license fees towards damages during pendency of challenge to the order of the Competent Authority. That mere change in forum in respect of license for commercial purpose would not put the liability of a commercial licensee on a different pedestal than the one which is statutorily governed under Section 24 of the MRC Act for the residential licensee. He would submit that legal position laid down in **Atma Ram Properties (P) Ltd.** is both inapposite and inapplicable in case of termination/expiry of license where by statute (Section 24) or by



License Agreement incorporating/adopting Section 24(2) makes an express provision that after the continued possession of licensee becomes wrongful due to expiry/termination of license, the licensee is required to pay damages for his continued use of premises at double the rate of the license fees, till he is dispossessed/hands over vacant possession. Therefore, the express statutory provision or contractual stipulation embodying Section 24(2) necessarily excludes principle laid down in **Atmaram Properties (P) Ltd** of paying damages for continued wrongful occupation at the rate the landlord could have let the premises if there had been no tenant. Once, the licensee, either by agreement, as in the present case or by statute under Section 24, is made to pay penal charges, double the agreed last licence fees; which invariably is much more than the rate of inflation or the normal enhancement due to market forces; the **Atmaram Properties** principle cannot apply.

10) Without prejudice to his contention that it is impermissible to fix market rent as interim compensation as pre-condition for stay of eviction decree in respect of a license, Mr. Chinoy would submit that the quantum of market rent determined by the Appellate Bench is otherwise excessive. He would submit that the Petitioner did not get a fair opportunity of leading evidence before Appellate Bench by relying on its own valuation report. That in absence of any valuation report on behalf of Petitioner, the Appellate Bench has determined the amount of interim compensation by taking into consideration only the valuer's report relied upon by Respondents, which did not indicate the market value of the suit premises as per Ready Reckoner Rates published from time to time. Relying on judgment of the Apex Court in **State of Maharashtra and**

**another Vs. Super Max International Private Limited and others**<sup>2</sup>, Mr. Chinoy would submit that return at the rate of 6% on market value of the property has been accepted by the Apex Court to be the reasonable rental return for fixation of interim compensation during pendency of appeal. He would also rely upon judgment of this Court in **Rukhsana Khalid Ghaswala & Anr. Vs. M/s. Mahendra Builders & Ors.**<sup>3</sup>, in support of his contention that the method of return on investment at the rate of 6% on fair market value of the property is also recognised by this Court as correct formula for determining the quantum of interim compensation.

11) Mr. Chinoy would further submit that the Appellate Court has erroneously relied on Respondents' valuer's report and out of the five instances referred therein, it has mainly relied on/accepted instance No. 2 i.e. premises admeasuring 5584 sq.ft situated at Ador house, 6-K Dubash Marg at rent of Rs. 262.56 per sq.ft. That the Appellate Court itself in its order establishes that the 2013 rental Agreement/ rate of Ador House premises was not a comparable instance. Mr. Chinoy would point out that Ador House instance was of 2013 and not of 2021/2022 but in the impugned order of the Appellate Court does not disclose/indicate the basis on which the Court has increased the rental rate from Rs. 262 (in 2013) Rs. 362 (in 2022). Further, the Appellate Bench itself has recorded that the instance compared is of premises directly abutting K Dubash Marg while the suit premises does not abut K Dubash Marg and is accessible only by a long narrow passage leading from K Dubash Marg. The Appellate Bench's order does not figure out how the *ad hoc* figure Rs. 50/- per

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<sup>2</sup> (2009) 9 SCC 772

<sup>3</sup> Writ Petition No.14241 of 2023 decided on 2 January 2024.

sq.ft per month is deducted (*suit premises not abutting K Dubash Marg*) so as to make instance comparable. That the Appellate Bench could not hold the said instance comparable to the rental rate for the suit premises in 2022 and accordingly could not have relied on the same to fix the monthly rental compensation of the suit premises. In absence of comparable instances, Mr. Chinoy would submit that best computation of fair rental value/ compensation would be 6% return on fixed with reference to the Ready Reckoner value of the suit premises. That neither the Report nor the Appellate Court considered (i) fair monthly compensation in 2022 on a 6% return on the Ready Reckoner value of the land and the building and (ii) fair monthly compensation payable as on May 2009 (*date of termination of license*).

12) Mr. Chinoy would rely upon Valuation Report of Mr. P.R. Doshi filed alongwith the petition at Exhibit-M in which the fair rental value of the property of the suit premises has been determined at Rs.3,16,000/- per month as on 1 May 2009 and Rs.5,26,000/- per month as on 17 December 2022. Mr. Chinoy would further submit that Petitioner has secured a fresh valuation report from Mr. P.R. Doshi based on Ready Reckoner rates on 9 February 2024, under which the rental value in respect of the suit premises is determined at Rs.2,30,610/- in the year 2009 and going upto Rs.5,99,661/- in the year 2022. Mr. Chinoy would therefore submit that in the event of this Court holding that it was permissible for the Appellate Bench to fix interim compensation in respect of the suit premises (fixed) with reference to fair market rate, the quantum of the interim compensation from the date of decree deserves to be reduced in the light of the valuation report dated 9 February 2024. Mr. Chinoy would

accordingly pray for appropriate modification in the impugned order dated 5 June 2023.

13) Mr. Vineet Naik, the learned Senior Advocate appearing for Respondents-Original Plaintiffs would oppose the Petition. He would submit that Petitioner has taken a position that he is a protected tenant governed by the provisions of MRC Act and that therefore it cannot now turn around and question the wisdom of the Appellate Bench in fixing interim fixation compensation as per judgment of the Apex Court in **Atma Ram Properties (P) Ltd.** (supra) submitting that such compensation cannot be fixed in respect of a transaction of a license. He would therefore urge this Court not to consider the first objection raised by Petitioner about permissibility for the Appellate Bench to fix interim compensation on the basis of market rent payable in respect of the suit premises. He would submit that the Petitioner cannot be permitted to raise artificial difference between the case of protected tenant and licensee for the purpose of application of principles enunciated in **Atma Ram Properties (P) Ltd.** after having failed in its attempt of securing a declaration of tenancy in respect of the suit premises.

14) Mr. Naik would further submit that the ratio in **Atma Ram Properties (P) Ltd** is not dependent on whether the judgment debtor is a tenant or licensee or a protected tenant and that the principles enunciated by the Apex Court in **Atma Ram Properties (P) Ltd.** can well be applied even to proceedings for recovery of possession from licensee. He would submit that in **Atma Ram Properties (P) Ltd.**, the Apex Court has held that the decree-holder needs to be compensated for loss occasioned by delay in execution of decree by grant of stay order.

That therefore the said principle would apply with full force to the present case as well where Petitioner is seeking to delay execution of the decree and thereby causing loss to the decree-holder and therefore Petitioner must reasonably compensate the Respondents during pendency of the Appeal. The underlying ratio of **Atma Ram Properties (P) Ltd** is the fact that when a stay is granted by the Appeal Court to execution of decree of eviction, it cannot be a blanket stay but to be subject to certain terms and conditions. The Appellate Court must satisfy itself under Order 41 Rule 5 of the Code that there is sufficient cause to order stay to execution of the decree. That in paragraph 11, the Apex Court deals with cases where the same principle is also applicable to cases where tenancy is governed by provisions of Transfer of property Act/general law. That the judgment in **Atma Ram Properties (P) Ltd**. is based on principle of law that a person continuing to remain in unlawful possession must be liable to compensate the decree-holder. He would further submit that what Petitioner has sought by way of application at Exhibit-8 before the Appellate Bench is stay to the execution of decree under provisions of Rule 5 Order 41 of the Code. That the Appellate Court is empowered to impose necessary conditions for grant of stay to the execution of decree under Order 41 Rule 5 of the Code. That since Petitioner has incurred a monetary liability on account of decree passed by the Small Causes Court, grant of stay cannot be without depositing the decretal amount. That therefore the direction for deposit of decretal amount is in accordance with the provisions of Order 41 Rule 5 of the Code, whereas the direction for depositing interim composition after the date of decree is as per the principles enunciated by the Apex Court in **Atma Ram Properties (P) Ltd**. (supra) and **Super Max International Private Limited** (supra).

15) Mr. Naik would further submit that bare reading of Clause 28 of the Leave and License Agreement dated 25 September 2006 would indicate that there was contractual stipulation between the parties that failure of Petitioner to vacate the suit property would entail in Petitioner paying Rs. 6,00,000/- per month to the Respondent and therefore the Appellate Court is therefore justified in directing payment of Rs.6,00,000/- per month as compensation from the date of termination till the date of decree. The provisions of Order 41 Rule 5 would come into play only after the decree is passed and hence the amount directed under Order 41 Rule 5 gains more significance in the present case since the License Agreement was terminated in May 2009, which is more than 15 years ago and Rs. 6,00,000/- p.m. is significantly less than the amount Respondent would have earned from the suit premises after December 2022.

16) Mr. Naik would further submit that the amount of interim compensation of Rs.17,95,000/- fixed by the Appellate Bench is not only reasonable but on a conservative side as compared to the valuation indicated in the report relied upon by Respondents. While arriving at this finding, the Appellate Court has squarely applied the ratio laid down in ***Atma Ram Properties (P) Ltd and Chandrakant Dhanu and Another Vs. Sharmila Inder Kumar Kapur and Others***<sup>4</sup> and guided by the restraint imposed by decisions in ***Super Max Internation Pvt. Ltd.*** (supra) and ***Niyas Ahmad Khan Vs. Mhmood Rakmad Ullah Kan and Another***<sup>5</sup> and ***Bijay Kumar Manish Kumar HUF Vs. Ashwin Bhanulal Desai***<sup>6</sup>. That no cognizance

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<sup>4</sup> 2009(2) Mh.L.J. 243

<sup>5</sup> (2008) 7 SCC 539

<sup>6</sup> 2024(4) Bom.C.R. 438

of the two valuation reports of Mr. P.R. Doshi now sought to be produced alongwith the petition can be taken in view of the fact that the said valuation reports were not produced before the Appellate Bench. That this is relevant because on 6 February 2023, petitioner filed two Appeals (Appeal No. 32/2023 and 31/2023) and also filed interim application at Exhibit 8 seeking stay of judgment passed by the Small Causes Court. On 10 March 2023, Respondent filed Reply to the application enclosing valuation report dated 10 March 2023 which was served to Petitioner on 24 March 2023. Petitioner failed to produce any valuation report and therefore on 26 April 2023, the Appellate Court directed Exhibit 8 to be heard without Petitioner's rejoinder. On 2 May 2023, Petitioner filed application for recall of Order dated 26 April 2023 and was in fact permitted to file Rejoinder. Thereafter, submissions were canvassed and impugned order dated 5 June 2023 was passed. That despite full knowledge of the Appellate Bench determining interim compensation corresponding to the market rate payable in respect of suit premises, Petitioner took the risk of not relying on any valuation report. Petitioner noticed valuation report of Shrinivas M. Kini & Co. produced by Respondents and instead of relying on its own valuation report, Petitioner choose to merely indicate errors in Respondents' valuation report. That in absence of any valuation report being produced before the Appellate Bench, Petitioner is precluded from challenging fixation of quantum of interim compensation determined by the Appellate Bench. That Postal address of the suit premises belies the allegation that suit premises are not on K Dubash Marg. Photographs taken from K Dubash Marg show exact location of the suit premises including photographs of the suit premises on Petitioner's website show nature and condition of suit premises.

17) Mr. Naik would take me through the valuation report of Shrinivas M. Kini & Co. to demonstrate that five comparable instances have been discussed in the said valuation report. That in respect of premises situated in same locality at K. Dubash Marg, the valuer had suggested rental return at the rate of Rs.262.50/- per square feet, Rs.338.22/- per square feet and Rs.400.29/- per square feet. That despite the suit premises having potential of fetching substantially higher rental return of Rs.400/- per square feet, the Appellate Bench has fixed the interim compensation at reasonably lower rate of Rs.312/- per square feet per month. He would submit that the valuation reports relied upon by Petitioner are full of errors. That despite the area of suit premises being indicated as 5755 sq. ft. carpet area, Petitioner's valuer has erroneously considered the lesser area of 5364 sq. ft. in his valuation report. That determination of market value by Petitioner's valuer is again totally erroneous as the same is calculated on the basis of considering only 60% of the value of the land in addition to further depreciating the value of the structure by 30%. In the report dated 1 July 2023 the method of calculating the market value of the suit premises to ascertain returns on the same is completely wrong and as prescribed in Ready Recknor. In fact, figures taken into consideration are also not as provided in the Ready Recknor. Having realized the said error, Petitioner obtained one more Report dated 9 February 2024. Even the said report which captures the correct method of calculating the market value of the suit premises is not proper as (i) the area of suit premises is erroneously taken at 5364 sq.ft. instead of 5755 sq.ft. (ii) land rate is incorrectly taken by increasing the same by 1.33% based on possible FSI, which is not correct method and (iii) Petitioner's valuer has not taken into



consideration that suit premises consists of 2000 sq.ft. (carpet area) on the ground floor, which is considered as shop premises for Ready Recknor calculations and accordingly different rates are required to be applied for ground floor and higher floors. Mr. Naik would submit that Petitioner has not been able to point out any glaring error in the methodology adopted by the Appellate Bench for fixing the quantum of interim compensation and in absence of any palpable error this Court would not be justified in exercising its jurisdiction under Article 227 of the Constitution of India to interfere in well reasoned order of the Appellate Bench. Mr. Naik would further highlight the fact that the Respondent has not made any deposit in the Small Causes Court in pursuance of the order dated 5 June 2023. That while seeking to create artificial dispute with regard to the quantum of interim compensation, Petitioner has not even paid the decretal amount of Rs.6,00,000/- per month. That therefore the conduct of the Petitioner would disentitle seeking equitable remedy in exercise of writ jurisdiction by this Court. Mr. Naik would pray for dismissal of the Petition.

#### **D. REASONS AND ANALYSIS**

18) Petitioner essentially raises two points in the present petition, second point being without prejudice to the first point. Firstly, Petitioner contends that interim compensation in the form of market rent cannot be directed to be deposited during the pendency of Appeal challenging decree for eviction of a licensee in view of existence of provision for contractual payment of damages. Secondly, and without prejudice to the first contention, it is submitted that if

such interim compensation commensurate with the market rent can be directed to be deposited, the quantum of interim compensation fixed in the present case is excessive.

**D.1 PERMISSIBILITY OF DIRECTING DEPOSIT OF MARKET RENT BY APPELLATE COURT AS A PRE-CONDITION FOR STAYING EVICTION DECREE PERTAINING TO PREMISES GRANTED ON LICENSE, WHERE CONTRACTUAL DAMAGES ARE AGREED.**

19) Petitioner faces decree for recovery of possession passed in L.E. & C. Suit No.83/109 of 2009. The said suit was filed by Respondents seeking recovery of possession from the Petitioner on account of expiry of tenure of license, as well as termination of license by notices dated 17 January 2009, 24 February 2009 and 30 March 2009. Though Petitioner had raised claim of tenancy by filing R.A.D. Suit No.766 of 2009, the said claim is repelled and it is held that the transaction between the parties is that of license. Having held that the transaction was that of license, the next issue for consideration was about the validity of termination of license. After considering the pleadings and evidence on record, the Trial Court has held that Plaintiff issued notice to the Defendant on 17 January 2009 demanding license fees for the month of January 2009, which was followed by another notice dated 24 February 2009, but the said notices were not complied with. The Small Causes Court has therefore answered Issue No.2 in L.E. & C. Suit No.83/109 of 2009 in the affirmative by holding that the license was validly terminated. Additionally, the Trial Court has further held that the tenure of the license otherwise came to an end on 24 September 2011. This is how, the Trial Court has decreed L.E. & C. Suit No.83/109 of 2009 by

directing Petitioner-Defendant to vacate and handover peaceful possession of the suit premises to the Plaintiffs.

20) Clause-28 of the Leave and License Agreement provides for payment of damages at double the rate of license fees in the event of failure on the part of the licensee to hand back possession of the premises as provided for in the Agreement. This is why the Trial Court had directed payment of double the amount of license fees of Rs.3,00,000/- i.e. Rs.6,00,000/- to the Plaintiff from 1 May 2009 on which date, the tenancy was terminated, till the date of handing over of possession. The Trial Court has however granted adjustment of security deposit of Rs.1 crores, which is with the Plaintiff.

21) While granting stay to the execution of the decree dated 17 December 2022, the Appellate Bench has directed deposit of decretal amount of Rs. 6,00,000/- from the date of termination of license till the date of decree. In respect of the period after the date of the decree, the Appellate Bench has undertaken the exercise of determining market rent in respect of the suit premises and after fixing the same at Rs.17,95,000/- per month, it has directed Petitioner to deposit the same from the date of the decree till the date of disposal of the Appeal. Petitioner objects to this course of action adopted by the Appellate Bench in splitting the period of the alleged unlawful occupation by directing deposit of contractual damages upto the date of the decree and market rent after the date of decree.

22) By now, it is a well settled principle that in respect of the premises governed by Rent Control Legislation, the tenancy does not stand terminated merely by service of termination notice and that the same stands terminated only with passing of decree for eviction. This

principle is reiterated by the Apex Court in its judgment in **Atma Ram Properties (P) Ltd.** (supra). Thus, an exception is carved out in respect of the tenancies covered by Rent Control Legislations by recognizing possession of tenant to be lawful till passing of eviction decree. In all other cases (*which are not governed by Rent Control Legislations*), the tenancy gets terminated from the date of service of notice under Section 106 of the Transfer of Property Act and in the event of Plaintiff succeeding in the suit, possession of the Defendant becomes unlawful from the date of termination of tenancy. On this settled principle of law, Mr. Chinoy has contended that since the transaction between the parties is held to be not governed by the provisions of the MRC Act and since it is held to be a mere license, Petitioner's possession of the suit premises has become unlawful from 1 May 2009 and that therefore two distinct formulae cannot be applied for making an order of deposit in respect of uniform period of alleged unauthorised unlawful possession. One of the facets of the submissions of Mr. Chinoy would be that since possession of a licensee becomes unlawful from the date of termination of license, the principle under the judgment of **Atma Ram Properties (P) Ltd.** for deposit of interim compensation commensurate with market rate will have to be applied from the date of termination of license. Mr. Chinoy fairly does not dispute this position. However, he further adds that since parties have contractually agreed on a particular amount for payment of damages, the Appellate Bench ought to have directed deposit of only agreed amount of contractual damages, which is Rs.6,00,000/- per month. What Mr. Chinoy submits is essentially, application of uniform principle for directing deposit in respect of the entire period of alleged unlawful possession.

23) In my view, in addition to direction for eviction of the Petitioner, the Trial Court has also passed a money decree against the Petitioner/Defendant, under which it is made liable to pay monthly amount of Rs. 6,00,000/- from 1 May 2009 till 17 December 2022. Petitioner applied before the Appellate Bench for stay of decree dated 17 December 2022. As observed above, the decree is of twin nature viz (i) directing Petitioner's eviction and (ii) money decree for payment of Rs.6,00,000/- per month from 1 May 2009 till 17 December 2022. Order 41 Rule 5 of the Code provides thus:

**5. Stay by Appellate Court. –**

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

[*Explanation.*-An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) **Stay by Court which passed the decree.**-Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) [Subject to the provisions of sub-rule (3)], the Court may make an ex parte order for stay of execution pending the hearing of the application.

[(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]

24) Thus, the Appellate Court is justified in directing deposit of decretal amount as a pre-condition for grant of stay to the effect of money decree under the provisions of Order 41 Rule 5 of the Code. Therefore, this is not a case involving splitting of period of alleged unlawful occupation by the Petitioner/Defendant. This is a case where the Appellate Court had exercised power under Order 41 Rule 5 by directing deposit of decretal amount of Rs. 6,00,000/- per month from 1 May 2009 to 17 December 2022. Once, there is a decree by the Trial Court determining monetary liability of the Defendant upto the date of decree, the Appellate Court cannot vary the same during pendency of the Appeal by way of interim order. If Mr. Chinoy's submission is accepted and deposit of market rent is to be directed in respect of the period from 1 May 2009 to 17 December 2022, the same would virtually amount to modifying the decretal amount at an interim stage by the Appellate Court, which is impermissible in law. In my view, therefore the Appellate Court is justified in directing deposit of the entire decretal amount of Rs.6,00,000/- per month from 1 May 2009 to 17 December 2022.

25) The other part of the decree is about eviction of the Petitioner-Defendant from the suit premises. Petitioner sought stay to the said direction and here is where the law laid down by the Apex

Court in **Atma Ram Properties Pvt. Ltd.** kicks in. The Apex Court has held that what the Judgment Debtor needs to compensate the Decree Holder, is the loss occasioned by delay in execution of the decree by grant of stay order by the Appellate Court. In **Atma Ram Properties Pvt. Ltd.**, the Apex Court has held in paras-11, 16, 18 and 19 as under:

11. Under the general law, and in cases where the tenancy is governed only by the provisions of Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. In the case of *Chander Kali Bai & Ors.* the tenancy premises were situated in the State of Madhya Pradesh and the provisions of the M.P. Accommodation Control Act, 1961 applied. The suit for eviction was filed on 8th March 1973 after serving a notice on the tenant terminating the contractual tenancy w.e.f. 31st December 1972. The suit came to be dismissed by the trial Court but decreed in first appeal decided on 11th August, 1975. One of the submissions made in this Court on behalf of the tenant-appellant was that no damages from the date of termination of the contractual tenancy could be awarded; the damages could be awarded only from the date when an eviction decree was passed. This Court took into consideration the definition of tenant as contained in Section 2(i) of the M.P. Act which included "any person continuing in possession after the termination of his tenancy" but did not include "any person against whom any order or decree for eviction has been made". The court, persuaded by the said definition, held that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the M.P. Act and on such termination his possession does not become wrongful until and unless a decree for eviction is passed. However, the Court specifically ruled that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion the Court held that the tenant was not liable to pay any damages or mesne profits for the period commencing from 1st January 1973 and ending on 10th August 1975 but he remained liable to pay damages or mesne profits from 11th August 1975 until the delivery of the vacant possession of the accommodation. During the course of its decision this Court referred to a decision of Madhya Pradesh High Court in *Kikabhai Abdul Hussain Vs. Kamlakar*, wherein the High Court had held that if a person continues to be in occupation after the termination of the

contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. This Court opined that what was held by the Madhya Pradesh High Court seemed to be a theory akin to the theory of "relation back" on the reasoning that on the passing of a decree for possession, the tenant's possession would become unlawful not from the date of the decree but from the date of the termination of the contractual tenancy itself. It is noteworthy that this Court has not disapproved the decision of the Madhya Pradesh High Court in *Kikabhai Abdul Hussain's* case but distinguished it by observing that the law laid down in *Kikabhai Abdul Hussain's* case was not applicable to the case before it in view of the definition of 'tenant' as contained in the M.P. Act and the provisions which came up for consideration of the High Court in *Kikabhai Abdul Hussain's* case were different.

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.

18. That apart, it is to be noted that the appellate Court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the tenant-appellant 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 of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate Court to put the tenant-appellant 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.

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.

26) The judgment in **Atma Ram Properties Pvt. Ltd.** is followed by the Apex Court in three Judge Bench decision in **Super Max International Private Limited** (supra) in which the Court has expressed agreement with the decision in **Atma Ram Properties (P) Ltd.** The Apex Court held in paras-74, 75, 76 and 77 as under:

74. In *Atma Ram Properties* the Court viewed the issue exactly in the same way (See paragraphs 6, 8 & 9 of the decision). Further, the decision also answers Mr. Lalit's submission that the tenancy did not come to end on the passing of the decree but would continue until the tenant was actually physically evicted from the premises in execution of the decree.

75. In *Atma Ram Properties* the Court framed two issues arising for consideration as follows: (SCC p.714, para10)

"10. .... This submission raises the following two issues: (i) in respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and (ii) up to what point of time is the tenant liable to pay rent at the contractual rate and when does he become liable to pay compensation for use and occupation of the tenancy

premises unbound by the contractual rate of rent to the landlord?”

76. The Court answered the first issue as follows: (*Atma Ram Properties case*, SCC pp.716-17, para 16)

“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.”

The second issue was answered as follows: (*Atma Ram Properties case*, SCC pp.718, para 19)

“(2) ... With effect from that date (the passing of the decree of eviction), 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.” (words in parenthesis added) We are in respectful agreement with the decision of the Court in *Atma Ram Properties*.

77. In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a 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.

27) Infact, the contention of Mr. Chinoy about permissibility for the Appellate Bench to direct payment of amount higher than the contractual rent during the pendency of Appeal gets conclusively answered by the observations of the Apex Court in para-77 of the

judgment in ***Supermax International Private Limited***. The Apex Court has held that the Appellate or Revisional Court can direct payment of monthly rent at the rate higher than the contractual rent. Therefore, the submission of Mr. Chinoy that only contractual amount of damages can be ordered to be deposited during pendency of the Appeal, does not hold any water.

28) The issue can be considered from another angle as well. In the present case, the quantum of license fees was agreed between the parties 18 years ago on 25 September 2006. During the license period from 25 September 2006 to 24 September 2011, the parties agreed for payment of license fees at the rate of Rs.3,00,000/- per month and compensation at the rate of Rs.6,00,000/- in the event of failure on the part of licensee to vacate the premises in terms of the License Agreement. Judicial notice is required to be taken of the fact that the average rent in Mumbai City has exponentially gone up after the year 2011 when the original license period was to come to an end. The suit filed by the Plaintiff seeking eviction of the Petitioner in the year 2009 took 13 long years for decision, during which time, the Plaintiffs are already made bound by the contractual damages provided for in the License Agreement. The issue therefore is whether Plaintiffs can be put to further loss by directing deposit of the amount which the parties agreed 18 years ago in 2006 during further litigation sojourn by Petitioner before the Appellate Bench? The answer to my mind, appears to be emphatically in the negative. As can be seen from the order of the Appellate Court, there is a vast difference between the contractual amount of damages of Rs.6,00,000/- and the market rent determined by the Court at Rs.17,95,000/- (*correctness of quantum of which is being determined in the latter portion of the judgment*). In my

view therefore, the principle of **Atma Ram Properties (P) Ltd.** needs to be applied with full force in a case of license also which is not governed by the provisions of Section 24 of the MRC Act.

29) M. Chinoy has relied upon provisions of Section 24 of the MRC Act in support of his contention that there can be no discrimination with regard to liability for damages in respect of residential and commercial premises. Section 24 of MRC Act applies to licence granted for residence and does not apply to licenses granted for purposes otherwise than residence. Section 24(2) makes the licensee liable to pay damages at double the rate of license fees if the licensee fails to deliver possession on expiry of period of license. Section 24 of MRC Act provides thus:

**24. Landlord entitled to recover possession of premises given on licence on expiry.**

(1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation- For the purposes of this section,-

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

30) Thus for licensor in respect of residential premises, though the damages payable during the period of revision are statutorily fixed at double the amount of license fees, but such licensor is provided with quicker, swifter and easier remedy by filing application before the Competent Authority, which usually gets decided in much lesser time than the suit before the Small Causes Court. In respect of licensors of commercial premises, though there is no quicker and easier remedy for recovery of possession of license premises, there is no statutory cap on the amount which the licensee can be made liable to pay in respect of unlawful occupation of the premises. Since suits and appeals take longer time for decision, it is otherwise not advisable to have any statutory cap fixed for damages in respect of commercial premises. Therefore, merely because there is a statutory cap at double the amount of license fees under Section 24 of the MRC Act applicable to residential premises, there is no reason to apply the same to proceedings initiated for recovery of possession of commercial premises before the Small Causes Court and its Appellate Bench. The Appellate Court is therefore justified in applying the principle enunciated by the Apex Court in its judgment in **Atma Ram Properties (P) Ltd.** to the present case.

31) Even otherwise, I do not see any reason why the principle of making Judgment Debtor reasonably compensate the Decree Holder for loss occasioned by delay in execution of decree should not be made applicable in a case involving license of commercial premises. Even in case of a license relating to commercial premises, the Decree Holder/Licensor can be made to suffer loss of return on

licensed premises due to delay in execution of decree because of stay granted by the Appellate Court under the provisions of Order 41 Rule 5 of the Code. In every case, damages in the form of double the amount of license fees may not match the market rent the premises are likely to fetch at a given point of time. In my view, therefore applying the principle of **Atma Ram Properties (P) Ltd** even to case of license would be necessary not just to ensure reasonable compensation for the licensor but more importantly to ensure that the licensee does not misuse the time required for decision of the Appeal by occupying the premises at less than the market rent.

32) In the present case, since the market rent appears to be substantially higher than the amount of damages representing double the amount of license fees, denial of market rent during pendency of Appeal would put the licensor at a disadvantageous position.

33) Mr. Chinoy has contended that the licensor cannot get best of the two positions by securing deposit of damages at double the license fees or market rent, whichever is higher. While Mr. Chinoy may not be entirely wrong in contending so, what needs to be appreciated is that the principle enunciated by the Apex Court in **Atma Ram Properties (P) Ltd** seeks to ensure reasonable compensation due to delay in execution of decree and in a given case where the market rent exceeds the quantum of contractual damages on account of long pendency of litigation, I do not see any reason why the Appellate Court should shy away from directing deposit of market rent. The issue here is not about the licensor seeking to secure best of the two positions as sought to be suggested by Mr. Chinoy. The principle is to ensure that the licensee who desires to litigate before

the Appellate Court must be made liable to deposit the actual market rent of the premises, if the same exceeds contractual amount of damages.

34) I am therefore of the view that the first point sought to be canvassed by Mr. Chinoy about impermissibility for the Appellate Court to direct deposit of amount in excess of contractual damages cannot be accepted and consequently it is held that in a given case, where market rent exceeds the amount of contractual damages in the case of license, the Appellate Court is empowered to direct deposit of such market rent as a precondition for grant of stay to the execution of decree under Order 41 Rule 5 of the Code.

## **D. 2 QUANTUM OF RENT**

35) Having answered the first point raised by Petitioner, the next issue is about the quantum of interim compensation fixed by the Appellate Bench of the Small Causes Court which is at Rs.17,95,000/- per month. According to Mr. Chinoy, the said amount of interim compensation is excessive and needs to be reduced substantially. In fact, Mr. Chinoy has contended that the amount of market rent has not exceeded the amount of contractual damages at any given point of time right from the year 2009 till the date of passing of the decree. I accordingly proceed to determine the second issue about correctness of quantum of interim compensation determined by the Appellate Bench.

36) As observed above, while Plaintiff-Licenser relied upon Valuation Report of Shrinivas M. Kini & Co. dated 10 March 2023, the Petitioner-Licensee did not produce any valuation report when the Appellate Bench determined the quantum of interim compensation. After Respondent filed Affidavit-in-Reply producing valuation report of Shrinivas N. Kini & Co., Petitioner, was initially denied opportunity to file rejoinder, but was later allowed to file the same. However, instead of producing its own valuation report, all that Petitioner did was point out errors in the valuation report of the Plaintiff-licensor. Thus, the only valuation report available before the Appellate Bench for deciding the quantum of interim compensation was that of Shrinivas M. Kini & Co. It is only after passing of the impugned order dated 5 June 2023 by the Appellate Bench that Petitioner thought of approaching a valuer and has secured report of Mr. P.K. Doshi dated 1 July 2023 which is produced alongwith the present petition at Exhibit-M. Additionally, by way of additional affidavit dated 13 February 2024, Petitioner has placed on record supplementary report of P. R. Doshi dated 9 February 2024.

37) Ordinarily, it would be improper for this Court to determine validity of order of the Appellate Bench by relying upon material which was never produced before it and in that sense, Petitioner cannot be permitted to contend before this Court that actual market rent in respect of the premises is the one indicated in the Valuation Reports dated 1 July 2023 and 9 February 2024. There appears to be a vast difference between the rental value indicated between the reports of Shrinivas M. Kini & Co. and the report of Mr. P.K. Doshi. While Plaintiff's valuer had indicated the rental return of



the suit premises at Rs. 26,24,280/- per month in the year 2022, Petitioner's Valuer has indicated rental return of Rs. 5,99,661.14/- per month in the same year. The Appellate Bench has fixed the interim compensation at Rs.17,95,000/- per month. Mr. Chinoy has urged that since rental return indicated in Petitioner's valuation reports is far less than the one fixed by the Appellate Bench, the matter be remanded for fresh consideration by the Appellate Bench by taking into consideration the valuation report of Mr. P.R. Doshi. In my view, it would be imprudent for this Court to do so considering the limited issue involved and also considering the long passage of time since passing of the impugned order by the Appellate Bench on 5 June 2023. Considering the fact that the interim compensation is to be paid only during pendency of the Appeal, the issue of determining the quantum of interim compensation cannot be kept pending indefinitely and needs to be determined in an expeditious manner. It is only because of this reason that instead of remanding the issue for fresh determination by the Appellate Bench, I proceed to take into consideration the valuation reports relied upon by Petitioner so as to put an end to the entire controversy.

38) Perusal of the valuation report of Shrinivas M. Kini & Co., relied upon by the Respondents would indicate that the valuer has taken into consideration five comparable instances as under:

Sr.No.	Premises	Per Sq.ft	Rent Per Sq.ft
1.	Office on ground and mezzanine floor in M.M. Wadia Building, 123 M.G. Road, Fort, Mumbai.	4393 sq.ft	Rs.182/-
2.	Unit No.AG/04 on ground floor and AB/01 of basement in Ador House, 6 <sup>th</sup> Dubhash Road, Fort, Mumbai.	5584 sq.ft	Rs.262.50/-

3.	Shop Nos.1 to 5 on ground and mezzanine floor, Boatwala Chambers, Sir P.M. Road, Fort, Mumbai.	2505 sq.ft	Rs.328.50/-
4.	Unit AF/09 on first floor in Adore House, 6 <sup>th</sup> Floor, Dubhash House.	2619 sq.ft	Rs.338/-
5.	Office on Ground Floor in Bhogilal Hargovindas Building, K. Dubhash Marg, Deck House Lane, K.G.	1522 sq.ft	Rs.400/-

39) It is seen that out of the five instances quoted by the Respondents' valuer-Shrinivas M. Kini and Co., three instances appear to be in close vicinity of the suit premises. The suit premises are also situated on K. Dubhash Marg. However, they do not abut the main K. Dubhash road and are located inside a lane. To that extent, the fifth instance quoted by Respondents' valuer in Bhogilal Hargovindas building appears to be most proximate to the suit premises, as the same is also located inside a lane of K. Dubash Marg i.e. '*Bake House lane*'. The suit premises are also located inside the lane of K. Dubash Marg, though the length of that lane is hardly few meters and the same ends at the suit structure. In respect of the fifth instance, the rent indicated by Respondents' valuer is Rs.400/- per sq.ft per month.

40) Petitioner has relied upon valuation report of P. R. Doshi dated 1 July 2023 which is based on twin parameters of valuation of the property as per Ready Reckoner as well as by applying comparable methods (of rent) as on 1 May 2009 and 17 December 2022. Since the interim compensation is directed to be deposited from the date of the decree (17 December 2022), it is not necessary to take into consideration the valuation pertaining to the year 2009. Petitioner's valuer has not indicated the exact value of the suit

premises as on 17 December 2022. What he has done is to take into consideration the rate per square meter of vacant land as per Ready Reckoner and has thereafter reduced the same by 60%. Thus, though the Ready Reckoner rate of vacant land as on 17 December 2022 is Rs.1,59,227.60/- per square meter, Petitioner's valuer has sliced it by 60% and has taken value of the vacant land at Rs. 95,536.56/- sq. mtrs. He has thereafter added cost of construction. However, while considering the cost of construction of Rs. 24,554/- per sq. mtrs, he has again deducted 30% therefrom on the ground that the age of the structure is more than 60 years old. This is how, Petitioner's valuer has considered value of the construction at Rs.14,726.40/- per sq.mtr. The combined value of the land and the structure is accordingly taken as Rs.95,536.56 + Rs.14,726.40/- = Rs.1,10,383.60/-. He has thereafter considered actual rental return at the rate of 7% per annum and has considered that the property is capable of securing rental return at the rate of Rs.7,726.85/- per sq.mtr equivalent to Rs. 59.82/- per sq.ft per month.

41) Another method adopted by Petitioner's valuer is considering rental agreements in the vicinity. He has considered license fees of premises in Gundecha Chambers at Nagindas Master Road, Fort, Mumbai admeasuring 900 sq.ft for which the rent is indicated at Rs. 138.89/- per sq.ft. Another comparable instance of premises at 'One Forbes Building' is considered in which the rent is taken at Rs. 151.80/- per sq.ft. The third instance is of building in 'Natwar Chambers, Nagindas Master Road' wherein the rent is indicated at Rs.108.11/- per sq.ft. In my view, the rent taken by Petitioner's valuer in respect of the premises at 'Gundecha Chambers', 'One Forbes

*Building*’ and *Natwar Chambers*’ are not realistic as those buildings are capable of returning much higher rentals.

42) The Petitioner’s valuer has thereafter considered that the rental return as per Ready Reckoner and comparable methods varies from Rs.59.82/- per sq.ft to Rs.136.62/- sq.ft and has thereafter arrived at mesne rental value at Rs.98.22/- sq.ft. Applying the rate of Rs.98.22/- per sq.meter per month for the area of 5364 sq.ft, Petitioner’s valuer has determined the rental return of Rs.5,26,000/- per month as on 17 December 2022.

43) In the supplementary report dated 9 February 2024, Petitioner’s valuer has once again considered the Ready Reckoner value applicable in respect of each year from 2009 till 2022 and has indicated the rental returns at reduced return rate of @ 6% as under:

Year	Rental Return
2009	Rs. 2,30,610.43/-
2010	Rs. 2,76,639.72/-
2011	Rs. 3,59,754.36/-
2012	Rs. 4,31,643.76/-
2013	Rs. 4,74,868.75/-
2014	Rs. 5,22,416.05/-
2015	Rs. 5,68,762.35/-
2016	Rs. 5,93,351.47/-
2017	Rs. 5,98,686.77/-
2018	Rs. 5,98,686.77/-
2019	Rs. 5,98,686.77/-
2020	Rs. 5,95,671.13/-
2021	Rs. 5,95,671.13/-
2022	Rs. 5,99,661.14/-

44) I find the Petitioner’s valuer report to be suffering from gross errors. Firstly, the area of the premises is erroneously taken

into consideration as '5364 per sq.ft.' when the area indicated in the License Agreement is '5755 sq.mtrs'. The methodology adopted by Plaintiff's valuer of deducting 60% value in respect of open land and 30% value from construction portion again suffer from clear errors. If the valuation at the rate of Rs. 1,10,383.60/- sq.mtrs is taken into consideration as indicated by Petitioner's valuer as on 17 December 2023, the total value of the suit premises admeasuring 534.66 sq.mts (5755 sq.ft) would be only Rs. 5,90,17,695/-. It is inconceivable that in Kala Ghoda area in Fort locality of Mumbai City, premises admeasuring 5755 sq.ft carpet area can be purchased at price of Rs. 5.90 crores. It is also inconceivable that such premises can be secured on license basis at rental of Rs.5.26 lakhs per month. I am therefore not inclined to accept the valuation report relied upon by the Petitioners, which in my view suffers from gross errors.

45) As observed above, the fifth instance in the report of Respondent's Valuer, Shrinivas Kini & Co. of 'Bhogilal Hargovindas building' appears to be most relevant so far as the suit premises are concerned. In addition to the said instance of 'Bhogilal Hargovindas Building', the Appellate Bench has also taken into consideration, instance Nos. 2 and 4 relating to the building 'Ador House' located at K Dubhash Marg for fixing the interim compensation at the rate of Rs.312/- per month per sq.ft. The Appellate Bench has recorded following findings:

Again From the date of decree till decision of this Appeal there is need to award compensation. For the same considering the report of valuer Mr.Kini & Co. it is clear from report and photographs attached to it that suit premises is not directly abutting to K. Dubash Marg, it is inside area from the said K. Dubash Road. The Valuer has taken into consideration five instances. Out of which

first instance is of the building which is situated on M.G. Road. Third instance is of the building which is situated on P.M. Road. Hence, these instances are of the building which are not situated on K. Dubash Road, therefore, these two instances need not be considered. We think instances in building Ador House and Bhogilal Hargovindas Building is necessary to be considered. Out of the same second instance is more comparable as area of said instance is 5584 sq.ft and area of suit premises is also 5755 sq.ft. Hence, area of the suit premises and area of second instance are almost similar. But premises in instance No.2 is directly abutting to K. Dubash Marg and suit premises is not directly abutting to K. Dubash Marg, therefore, some deductions are necessary. At the same time, said instance dated 11.12.2013. Therefore, there is need of some addition also. Moreover premises in second instance is not a standalone building. As per second instance monthly compensation is Rs.262 per sq.ft. p.m in 2013, if we consider every year increase it will be 362 per sq.ft. per month. There is need for deduction for extensive civil work done by appellants, as building is not road abutting building and for other things like taxes borne by appellants etc. If Rs.50/- deducted for same, then Rs.312/-p.m. per sq.ft. will be a fair compensation. Carpet area of suit premises is 5755 sq.ft. hence, per month compensation for same is  $312 \times 5755 = 17,95,000$ .

46) Thus, instance No. 2 relating to Unit-AG/04 on ground floor and AB/01 on basement of the building 'Ador House' is finally accepted by the Appellate Court in which the rental return is indicated at Rs.262.50/- sq. ft per month. However, since the rent was fixed on 11 December 2013, the Appellate Bench has increased upto Rs. 362 sq.ft per month. The Appellate Bench has thereafter deducted Rs.50/- from the said rate on account of extensive civil work done by Petitioner, as well as location of the structure inside the lane and liability for payment of taxes. This is how rate of Rs.312/- sq.ft per month is finally accepted by the Appellate Bench.

47) It must be borne in mind that the suit premises are located in one of the most prominent locations of Mumbai City, considering the purpose for which the same are used. Petitioner is engaged in the business of dealing in art. The suit premises are

located the immediate vicinity of Jehangir Art Gallery which is one of the most iconic spots for art lovers. *Kala Ghoda* is otherwise a home for several art galleries. It is Mumbai's Art District. Therefore, so far as Petitioner's business is concerned, location of the suit premises is most certainly prominent. It is also a matter of common knowledge that the rate per square feet in respect of office premises in Fort area range between 150 to 400 sq.ft. depending on the location, condition of building and floor on which they are situated. Though the location of the suit premises is not directly on the main K. Dubash road, at the same time, Petitioner occupies structure on ground and two upper floors. Considering this position, the rate of Rs. 312/- per sq.ft. applied by the Appellate Bench does not appear to be excessive.

48) Mr. Chinoy has placed on record photographs of the building in order to demonstrate the location, as well as condition of the structure. True it is that the photographs do not indicate that the structure is in swanky condition, but at the same time it is Petitioner's choice to operate its art gallery in the suit premises. This Court cannot be oblivious of the fact that in neighbouring Bhogilal Hargovindas building, rent of Rs. 6,00,000/- per month is being paid in respect of the premises admeasuring 1522 sq.ft which works out to Rs.394.14/- sq.ft. per month. The Appellate Bench has ignored the said instance on account of the fact that the said premises are located on the main road. However as indicated above, the lane is specially dedicated for suit structure and the premises are visible from the main road. Also, Petitioner is occupying the ground floor structure also, which is like a shop or a showroom. Therefore, the rate of Rs. 312/- applied by the Appellate Bench is comparable to fifth instance

of ground floor structure of 'Bhogilal Hargovindas building', where the rent is Rs.394.14/- per sq. ft.

49) Mr. Chinoy has relied upon judgments of the Apex Court in **Super Max International Private Limited** and of this Court in **Rukhsana Khalid Ghaswala** (supra), in support of his contention that rental return of the rate of 6% p.a. is a norm accepted by Courts. While his contention appears to be correct, the methodology adopted by Petitioner's valuer for determining the market value of the property clearly appears to be erroneous and therefore this Court is unable to apply the rate of 6% rental returns in the present case. Along with the written submissions, Petitioner has appended 6 complex charts indicating various valuations in respect of the suit premises and determining 6% annual rental return thereon. As the Charts are produced for the first time along with written submissions, without taking me through them during the course of hearing, the said Charts are bit difficult to comprehend as they are based on complex calculations. However, it appears that the maximum rental return indicated in the said chart is Rs. 6,91,000/- per month after adopting 50% depreciation on ready reckoner value of the premises as on 17 December 2022. However, if the figure of Rs. 6,91,274/- is taken into consideration, per sq. ft. monthly rent would be only Rs. 120/-, which appears to be substantially low considering the overall rent in respect of premises in Fort area and particularly the art district of *Kala Ghoda*. Also, Petitioner's maximum valuation of Rs. 13,82,54,282/- indicated in one of the said Charts appears to be abysmally low as the rate per sq. ft. going by that valuation would be Rs. 24,000/- and it is impossible to purchase premises at such low rate in *Kala Ghoda* or in the entire Fort area on ownership basis. Therefore heavily



depreciated valuation indicated in complex Charts sought to be produced by Petitioner for the first time along with the written submissions deserve to be ignored.

50) In absence of availability of accurate and reliable valuation of the suit premises, I am unable to determine the rental return at the rate of 6% p.a. which is usually the norm accepted by Courts. Therefore, the only indicator available on record for fixation of quantum of interim compensation is the comparable instances placed on record by the Plaintiff's valuer. The Appellate Court has fixed the interim compensation at the rate of Rs.312/- per sq.ft. per month. Though, usually the interim compensation should represent the amount of return the property is likely to fetch, if the decree is not stayed, in the present case, there appears to be substantial variation between the rental returns of adjoining properties. The suit premises are not located on the main street and can be accessed through a narrow lane. The suit premises thus lack road frontage. The condition of the suit premises also does not appear to be mint for it to attract best possible market rent. If these aspects are taken into consideration, in my view, some reduction in the rate applied by the Appellate Bench deserves to be effected.

51) In my view, considering the location and condition of the building, some reduction in the rate applied by the Appellate Bench would meet the ends of justice. Therefore, instead of fixing the rate of Rs.312/- it would be appropriate to fix the interim compensation at the rate of Rs. 200/- per sq. ft. per month. Though the market rent applicable in Kala Ghoda area is substantially higher, interim compensation at the rate of Rs. 200 per sq. ft per month is being fixed considering the fact that a detailed inquiry would be undertaken at

the time of fixation of mesne profits, as and when occasion arises and in the event the amount of interim compensation fixed by this Court is ultimately found to be lower than the market rent, the Court fixing mesne profits will be in a position to direct payment of balance amount of loss suffered by Plaintiffs, in the event of dismissal of the appeal. It is therefore clarified that as and when occasion arises for fixation of mesne profits, the Court shall not be guided by the amount of interim compensation fixed by this Order.

52) In my view therefore it would be appropriate to fix the interim monthly compensation at the rate of Rs. 200 per sq. ft. in respect of premises admeasuring 5755 sq. ft, which would be Rs. 11,51,000/-

**E. ORDER**

53) Considering the overall conspectus of the case, I am of the view that though no serious flaw can be traced in the order passed by the Appellate Bench, slight modification in the amount of interim compensation would meet the ends of justice. Accordingly, the interim compensation in respect of the suit premises is fixed at the rate of Rs.200/- per sq.ft. per month. Therefore, the interim compensation for suit premises admeasuring 5755 sq.ft would be Rs. 11,51,000/-. This is the only relief which can be granted in favour of the Petitioner.

54) I accordingly proceed to pass the following order :

- (i) Order dated 5 June 2023 passed by the Appellate Bench of the Small Causes Court is upheld, except with modification in the amount of interim compensation payable in respect of the suit premises is fixed at the rate of Rs. 11,51,000/- which shall be deposited by the Petitioner from the date of the decree till the disposal of the Appeal.
- (ii) The arrears of the monthly interim compensation upto October 2024 shall be deposited by Petitioner on or before 31 October 2024 and it shall continue to deposit the monthly interim compensation of Rs. 11,51,000/- on tenth day of every month from November 2024 till decision of the Appeal.

55) With the above directions, the Writ Petition is **disposed of**.

56) After the judgment is pronounced, the learned counsel for the Petitioner, seeks stay of the judgment for a period of 8 weeks. The request is opposed by the learned counsel appearing for the Respondents. Since the amount of interim compensation is already reduced by this Court from Rs.17,95,000/- to Rs.11,51,000/-, request for stay of the judgment is rejected.

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[SANDEEP V. MARNE, J.]