

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024  
(@ Special Leave to Appeal (C) No(s). 16107/2023)

VIJAY ANANT GANGAN

APPELLANT (S)

VERSUS

ZENABIBI GULAM RASOOL HUSSEINBHAI  
JURULLAH & ORS.

RESPONDENT (S)

O R D E R

Leave granted.

Being aggrieved by the order of the High Court of Bombay dated 05.11.2020 in Civil Revision Application No.357 of 2017 under which the High Court had directed the original revisionists (petitioner/appellant herein) to deposit Rs.2,50,000/- per month towards compensation/mesne profit, the original lessor (respondent No.19 herein) had preferred the Special Leave Petition (C) No.16019 of 2020 converted to Civil Appeal No.7774 of 2022.

This Court noted that the subject property was situated in Worli area of Mumbai, which is close to the heart of the city and at a very prominent place. The land on which the superstructure was constructed by the lessee was leased by the lessor by Lease Deed dated 16.08.1949 for a period of 30 years. The original lessee erected a building comprising of ground and four upper storeys, known as "Garment House".

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There were two chawl-like structures having about 20 tenements in front of "Garment House". According to the original plaintiffs/lessors, on or about 22.01.1968, after the death of the original lessor, his legal heirs entered into a supplementary Indenture of Lease permitting the original lessee to demolish the old structures standing on the property and erect new structures. The duration of the supplementary lease was for a period of 98 years commencing from 01.02.1968. That, on the death of the original lessee, as per his last will and testament, a Trust was created and thereafter eviction proceedings were initiated. By judgment and decree dated 25.06.2004, the Trial Court dismissed the suit which was challenged by the original plaintiffs before the Appellate Bench of the Court of Small Causes. During the pendency of the said appeal, Sumer Corporation (respondent No.19 herein) claiming to be a transferee of the suit property from the legal heirs of the original lessors by a registered deed of conveyance, sought for joinder in the appeal which was allowed and the decree of the Trial Court ordering eviction of the defendants (including the original revisionist) was set aside.

Being aggrieved, a revision application was filed before the High Court by the defendant in which Sumer Corporation was impleaded as respondent No.19 in the civil revision application. Sumer Corporation claims to have acquired right, title and interest in the suit property

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(lease) in the year 2008 on payment of sale consideration of Rs.5.50 crores. While admitting the revision application, the High Court had directed the original revisionist to deposit Rs.2,50,000/- per month towards compensation/mesne profit as a condition of stay and to furnish a security for the arrears of compensation payable from 02.04.2018 and till the date of the said order a sum of Rs.77,55,000/- to be made as fixed deposit in favour of the Registrar General of the High Court of Bombay. It was further directed that the compensation/mesne profit shall be payable with effect from the date of passing of the order by the Court i.e., on or before 10th day of each succeeding month beginning from December, 2020.

Being aggrieved by the said order, the original respondent No.19 approached this Court contending that the amount determined towards monthly compensation was very low and that it should have been a higher figure, while on behalf of the original revisionist, it was contended that the said figure was rightly arrived at. This Court set aside the order of the High Court and remanded the matter in the following terms:

"8. In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court determining the compensation for the use and occupation of the premises by the tenant @ Rs. 2,50,000/- per month is hereby quashed and set aside. The matter is remitted back to the High Court to determine the compensation for the use and occupation of the premises in question by the  
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tenant / lessee afresh and taking into consideration the observations made hereinabove. For that purpose, the parties may be permitted to lead the evidence on the rate of rent that would have been earned by the landlord / lessor, if the lessor would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The aforesaid exercise be completed within a period of six months from the date of the receipt of the present order. Till a fresh decision on remand is taken by the High Court, by way of interim arrangement and subject to further decision that may be taken by the High Court on remand, we direct the respondent No. 1 to deposit the compensation at-least @ Rs. 2,50,000/- per month from the date of passing of the eviction decree, however, as observed hereinabove, the same shall be subject to the final decision/determination of compensation on remand.

Present appeal is accordingly partly allowed<sup>8</sup> to the aforesaid extent.

No costs."

On remand, the High Court by the impugned order has directed as under in the operative portion:

"23. In view of the above discussion, I pass the following order.-

ORDER.

i) Order granting ad-interim relief dated 2 April 2018 shall continue to operate till disposal of the Civil Revision Application except with respect to land admeasuring about 551 sq. mtrs. alongwith two chawls standing thereon as mentioned hereinabove on the following conditions:-

a. Fair and reasonable compensation which the Applicants shall deposit p.m. is determined at Rs. 53,80,878.17/- The said compensation be deposited from 4 May 2017;

b. Applicants are granted six months time to deposit the arrears from today, deducting the amount of Rs.2,50,000/- already deposited by the Applicants. However, the Applicants shall deposit the said compensation amount p.m. w.e.f. 1" May 2023. The Applicants to pay the compensation p.m. on or before 20 of each month.

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c. The Applicants shall deposit the said monthly charges every month on or before 20th of each month and in case of any four defaults, the Respondents are granted liberty to apply to this Court for vacation of interim relief.

d. The Applicants shall not create any third party right, title and interest with respect to the suit premises. However, the Applicants are granted liberty to approach this Court in case any premises are proposed to be given on leave and license basis to third parties.

e. Respondent Nos.10 and 19 shall not create any third party right, title and interest with respect to the said portion of about 551 sq. mtrs. along with two chawls standing thereon.

24. At this stage, Mr Naidu, learned counsel appearing for the Applicants seeks stay of this order. However, I have already granted six months' time to pay arrears. Therefore, sufficient time is there for the Applicants to challenge this order. On the request of Mr. Naidu it is clarified that the payment which is to be made w.e.f. 1 May 2023 for the first three months period i.e for the period of May 2023, June 2023 and July 2023 can be made on or before 31 August, 2023."

We have heard Shri C. Aryama Sundaram and Shri Dama Sesadri Naidu, learned senior counsel alongwith learned instructing counsel for the appellant and Shri Mukul Rohatgi, Shri Neeraj Kishan Kaul, Shri Gopal Sankaranarayanan, learned senior counsel alongwith learned instructing counsel for the respondents on several occasions.

By way of an interim arrangement, the impugned order passed by the High Court dated 21.04.2023 is modified only

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to the extent, namely, the fair and reasonable compensation which the appellant has to pay shall be Rs.40,00,000/- per month instead of Rs.53,80,878.17. All other conditions imposed by the High Court shall remain undisturbed.

It is submitted by Shri C. Aryama Sundaram, learned senior counsel that the arrears of fair and reasonable compensation shall be paid within a period of three months from today and the appellant shall continue to pay the aforesaid amount.

Insofar as the appellant's right to create third party rights is concerned, it is clarified that such right shall accrue to the appellant only after clearing all arrears of amount, as afore-stated and on appellant's approaching the High Court and seeking leave to create third party interest in respect of the scheduled premises.

The appeal is allowed to the aforesaid extent.

Pending application(s) shall stand disposed of.

.....J.  
[B.V. NAGARATHNA]

.....J.  
[AUGUSTINE GEORGE MASIH]

NEW DELHI  
JANUARY 03, 2024

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 16107/2023

(Arising out of impugned final judgment and order dated 21-04-2023 in CRA No. 357/2017 passed by the High Court Of Judicature at Bombay)

VIJAY ANANT GANGAN

Petitioner(s)

VERSUS

ZENABIBI GULAM RASOOL HUSSEINBHAI  
JURULLAH & ORS.

Respondent(s)

(IA No. 144816/2023 - APPLICATION FOR PERMISSION  
IA No. 143949/2023 - EXEMPTION FROM FILING C/C OF THE  
IMPUGNED JUDGMENTIA No. 144812/2023 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)Date : 03-01-2024 These matters were called on for hearing  
today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA  
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

For Petitioner(s) Mr. C. Aryama Sundaram, Sr. Adv.  
Mr. Dama Sesadri Naidu, Sr. Adv.  
Shankey Agrawal, AOR  
Mr. S C Naidu, Adv.  
Mr. Rakesh Sawant, Adv.  
Mr. Nitin Lonkar, Adv.  
Mr. Soumik Ghosal, Adv.  
Ms. Sonali Suryawanshi, Adv.  
Ms. Pradnya Bheke, Adv.  
Ms. Shamiana Hussain, Adv.  
Mr. Siddharth Chapalgaonkar, Adv.

For Respondent(s) Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Gopal Sankaranarayanan, Sr. Adv.  
Mr. Himinder Lal, AOR  
Mr. Roy Abraham, Adv.  
Ms. Reena Roy, Adv.  
Mr. Vivek Kantawala, Adv.  
Mr. Akhil Abraham, Adv.  
Ms. Shanay Bafna, Adv.  
Ms. Jhanvi Dubey, Adv.

Mr. Neeraj Kisan Kaul, Sr. Adv.  
Mr. Vikas Mehta, AOR

contd..

Mr. Adith Nair, Adv.  
Mr. Prakash Shah, Adv.  
Mr. Ranjeev Carvalho, Adv.  
Ms. Ira Mahajan, Adv.

Mr. Randhir Kumar Ojha, AOR  
Mr. N. Narasimha Murthy, Adv.  
Mr. Shashi Kumar, Adv.  
Mr. Sandeep Lamba, Adv.  
Ms. Shreya Singh, Adv.  
Mr. Amith Kumar Gupta, Adv.  
Mr. Sarvesh Singh, Adv.  
Mr. Amit Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)  
ASTT. REGISTRAR-cum-PS

(MALEKAR NAGARAJ)  
COURT MASTER (NSH)

(signed order is placed on the file)



