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SUMER CORPORATION

v.

VIJAY ANANT GANGAN & ORS.

(Civil Appeal No. 7774 of 2022)

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NOVEMBER 09, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

Mesne profit – Compensation for use and occupation of the premises by the tenant – Leased property is situated in Worli area of

- C *Mumbai at a very prominent place – Suit for eviction – Trial court dismissed suit – Appellate Bench of Small Causes Court, however, ordered eviction – Revision before High Court – During pendency of revision before High Court, Sumer Corporation applied for impleadment and was added as respondent no. 19 – Respondent no. 19 was claiming to have right, title and interest in the suit property*
- D *(lease) pursuant to the deed of conveyance executed in the year 2008 for a sale consideration of Rs. 5.50 crores – By impugned order, while admitting the revision application and while staying the eviction decree passed by the Appellate Bench, the High Court inter alia directed the original revisionist to deposit Rs. 2,50,000/- per month towards compensation as a condition of stay – Original Respondent no. 19 filed instant appeal – Held: The approach adopted by the High Court is not a sound principle of law to form the basis for determining the compensation in this case – While determining the monthly compensation, High Court considered the fair rate of return @ 6.5% annually on the amount for which the*
- E *appellant purchased the property in the year 2008, i.e., Rs. 5.50 crores – The aforesaid could not have been the basis while determining the monthly compensation – If the approach adopted by the High Court is accepted and/or approved, in a given case, it may happen that the lessor might have purchased the property forty years back and/or long back and if the said approach is considered and thereafter the monthly compensation is determined, the same cannot be said to be a reasonable compensation – Matter remitted to High Court for fresh determination of compensation for use and occupation of the premises by the tenant.*

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Partly allowing the appeal, the Court

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HELD: 1.1 As observed and held by this Court in the case of *Atma Ram Properties (P) Ltd.* from the date 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. [Para 7.1][697-F-G]

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1.2 In the case of *Super Max International Private Limited and Ors.*, it is further observed and held that in fixing the amount subject to payment of which the execution of the order/decrees is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount. Therefore, in a revision/appeal preferred by the tenant, who has suffered an eviction decree, the appellate/revisional court while staying the eviction decree can direct the tenant to pay the compensation for use and occupation of the tenancy premises upon the contractual rate of rent and such compensation for use and occupation of the premises would be 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. In the present case, the High Court has not done that exercise and has determined the compensation considering the market value/value at which original respondent No. 19 acquired the rights of the suit property for a sum of Rs. 5.50 cores and thereafter, considering estimated return @ 6.5% per annum, the High Court has determined/awarded the compensation for use and occupation of the premises by the tenant @ Rs. 2,50,000/- per month. The aforesaid method adopted by the High Court while determining the compensation cannot be accepted. The High Court was required to undertake exercise and to determine the compensation 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. Under the circumstances, the matter is to be remanded to the High Court for fresh determination of the compensation for use and occupation of the premises by the tenant, who has suffered the eviction

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- A decree, during the pendency and the final disposal of the revision application by the High Court. [Paras 7.2, 7.3][697-H; 698-A-E]

Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.
(2005) 1 SCC 705 : [2004] 6 Suppl. SCR 843; State of Maharashtra and Anr. v. Super Max International

- B Private Limited and Ors. (2009) 9 SCC 772 : [2009] 13 SCR 801 – relied on.

2. 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

- C hereby quashed and set aside. [Para 8][698-F]

Case Law Reference

[2004] 6 Suppl. SCR 843	relied on	Para 4.3
[2009] 13 SCR 801	relied on	Para 4.5

- D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7774 of 2022.

From the Judgment and Order dated 05.11.2020 of the High Court of Judicature at Bombay in Civil Revision Application No. 357 of 2017.

- E Chander Uday Singh, Sr. Adv., Pratap Venugopal, Ms. Surekha Raman, Akhil Abraham Roy, Vijay Valsan, M/S. K J John and Co., Advs. for the Appellant.

F Shekhar Naphade, Siddharth Dave, Sr. Advs., Rahul G. Tanwani, Anantha Narayana M.G, Ms. Aishwarya Dash, Farah Hashmi, Prashant Pratap, Kumar Mitakshar, M. L. Gopala Krishna, Adith Nair, Vikas Mehta, Mohit Chitale, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- G 1. Feeling aggrieved and dissatisfied with the impugned order passed by the High Court of Judicature at Bombay dated 05.11.2020 in Civil Revision Application No. 357 of 2017 by which while admitting the revision application preferred by the contesting respondents herein – original revisionists against the judgment and decree passed by the

Appellate Bench of the Court of Small Causes at Mumbai and while staying the judgment and decree passed by the Appellate Bench, the High Court has directed the respondent No. 1 - original revisionist to deposit Rs. 2,50,000/- per month towards the compensation/mesne profit, the original lessor has preferred the present appeal.

2. At the outset, it is required to be noted that the property in question is situated in Worli area of Mumbai, which is in the heart of the city, at a very prominent place. The land on which the superstructure is constructed by the lessor was leased by the lessee 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". In front of the "Garment House", there were two chawl-like structures having about 20 tenements. 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.

2.1 On or about 01.04.1987, the original lessee died. The original lessee executed a last will and testament creating inter alia a charitable trust and appointing the appellant herein and one Amritlal Gordhandas Jajal as executors and trustees. That thereafter in or about 1988, the eviction proceedings were initiated. By judgment and decree dated 25.06.2004, the Trial Court dismissed the suit. The decree was challenged by the original plaintiffs before the Appellate Bench of the Court of Small Causes. During the pendency of the appeal, one Sumer Corporation, claiming to be a transferee of the suit property from the legal heirs of the original lessors by a registered deed of conveyance, applied for joinder to the appeal. By its judgment and order dated 04.05.2017, the Appellate Bench of the Small Causes Court allowed the appeal and set aside the decree passed by the Trial Court and decreed the suit ordering eviction of the defendants (including the original revisionist).

2.2 Being aggrieved, the contesting respondents herein – original revisionist has filed the revision application before the High Court. During the pendency of the Civil Revision Application (CRA), the appellant – Sumer Corporation applied for impleadment and was added as respondent No. 19 to the CRA.

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- A 2.3 At this stage, it is required to be noted that the appellant herein – Sumer Corporation, respondent No. 19 before the High Court is claiming to have right, title and interest in the suit property (lease) pursuant to the deed of conveyance executed in the year 2008 for a sale consideration of Rs. 5.50 crores.
- B 2.4 By the impugned order, while admitting the revision application preferred by the original revisionist, who is aggrieved of the decree passed by the Appellate Bench of the Small Causes Court and while staying the eviction decree passed by the Appellate Bench, the High Court has directed the original revisionist to deposit Rs. 2,50,000/- per month towards compensation as a condition of stay. The High Court has further directed the original revisionist to furnish a security for the arrears of compensation payable from 02.04.2018 and till the date of the impugned order and a sum of Rs. 77,55,000/- as by deposit of a fixed deposit receipt of like amount endorsed in favour of the Registrar General of the High Court at Bombay. The High Court has further directed that the aforesaid compensation shall be payable w.e.f. 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.

2.5 Feeling aggrieved and dissatisfied with the impugned order of interim compensation, the original respondent No. 19 has preferred the present appeal.

3. Shri C.U. Singh, learned Senior Advocate appeared on behalf of the appellant and Shri Shekhar Naphade, learned Senior Advocate has appeared on behalf of the contesting respondent – original revisionist. Shri Siddhartha Dave, learned Senior Advocate has appeared on behalf of some of the respondents, who also claim right, title and interest in the property in question.

4. Shri C.U. Singh, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a very serious error in directing the original revisionist to deposit the compensation @ Rs. 2,50,000/- per month only while staying the judgment and order passed by the Appellate Bench.

4.1 It is vehemently submitted by Shri C.U. Singh, learned Senior Advocate appearing on behalf of the appellant that the method adopted

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by the High Court while determining the monthly compensation is untenable and unsustainable. It is submitted that the High Court has determined the monthly compensation by considering the amount paid by the appellant for the purchase of the property in question, i.e., Rs. 5.50 crores and considering 6.5% return.

4.2 It is submitted that market value of the property at which the lessor and/or its subsequent purchaser acquired the property could not be the basis for fixing the monthly compensation. It is submitted that as per the settled position of law, the valuation of the property on the date of decree can be the relevant consideration for the purpose of determining the monthly compensation.

4.3 Relying upon the decision of this Court in the case of **Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd., (2005) 1 SCC 705** (para 19), it is vehemently submitted by Shri C.U. Singh, learned Senior Advocate appearing on behalf of the appellant that as observed by this Court while passing an order of stay, 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. It is further submitted that as observed by this Court the tenant is liable to pay mesne profits/ 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.

4.4 It is submitted by Shri C.U. Singh, learned Senior Advocate appearing on behalf of the appellant that in the present case, the appellant produced and relied upon the valuation report of one Mr. Maniyar, who worked out the monthly compensation on the basis of the value of the property. It is submitted that as per the Valuation Report of Mr. Maniyar, the compensation could have been arrived at Rs. 67,76,038/- per month. It is submitted that, however, ignoring the detailed Valuation Report, of Mr. Maniyar, the High Court has determined a very meagre amount towards compensation, i.e., Rs. 2,50,000/- per month with respect to the lands located in the heart of the city - at Worli and which is in the prime location. It is submitted that therefore, fixing the compensation at Rs. 2,50,000/- per month with respect to such a huge land situated in the

- A prime location would be unreasonable and therefore the same is liable to be interfered with by this Court.

4.5 Shri C.U. Singh, learned senior counsel appearing on behalf of the appellant has submitted that the decision of this Court in the case of **Atma Ram Properties (P) Ltd. (supra)** has been subsequently

- B followed by this Court in the case of **State of Maharashtra and Anr. Vs. Super Max International Private Limited and Ors., (2009) 9 SCC 772**. It is submitted that in the subsequent decision in the case of **Super Max International Private Limited and Ors. (supra)**, this Court has again reiterated the law laid down in the case of **Atma Ram Properties (P) Ltd. (supra)**.

C 4.6 Making above submissions, it is prayed to allow the present appeal.

5. Shri Shekhar Naphade, learned Senior Advocate appearing on behalf of the respondent No. 1- original revisionist has while opposing

- D the submissions made on behalf of the appellant has submitted that the power of the Appellate Court to award the compensation while staying the decree of eviction is not disputed. However, he has submitted that the compensation, which may be awarded shall be reasonable and may not be excessive, even as observed by this Court in the case of **Atma Ram Properties (P) Ltd. (supra)** and **Super Max International**

- E **Private Limited and Ors., (supra)**. It is submitted that in the present case, the superstructure has been constructed by the lessee and only the land was leased. It is submitted that the decree has been passed with respect to the land and not with respect to the superstructure. It is submitted that therefore while fixing the monthly compensation, the
- F aforesaid aspect is required to be borne in mind.

G 5.1 It is submitted that in the present case, by giving a detailed reasoning, the Hon'ble High Court has discarded and/or not believed the valuation report of Mr. Maniyar, relied upon by the appellant. It is submitted that while determining compensation @ Rs. 67,76,038/-, the

- G valuer has relied upon and had taken into consideration the Ready Reckoner rate of the land with applicable permissible FSI. It is submitted that thereafter and after discarding the valuation report relied upon by the appellant, considering the fair rate of return on the amount invested by the appellant @ 6.5% per annum comes out to Rs. 19,50,000/-. Therefore, the Hon'ble High Court has rightly determined the monthly
- H compensation @ Rs. 2,50,000/-, which can be said to be a reasonable

monthly compensation, which is not required to be interfered with by A this Court.

5.2 Making above submissions, it is prayed to dismiss the present appeal.

6. Shri Siddhartha Dave, learned Senior Advocate appearing on behalf of the proforma respondent, who was also claiming some right, title and interest in the property in question has supported the appellant. B

7. Having heard the learned Senior Advocates appearing on behalf of the respective parties and having gone through the impugned order passed by the High Court determining the monthly compensation @ Rs. 2,50,000/-, we are of the opinion that the approach adopted by the High Court is not a sound principle of law to form the basis for determining the compensation in this case. In the present case, while determining the monthly compensation, the High Court has considered the fair rate of return @ 6.5% annually on the amount for which the appellant purchased the property in the year 2008, i.e., Rs. 5.50 crores. The aforesaid could not have been the basis while determining the monthly compensation. If the approach adopted by the High Court is accepted and/or approved, in a given case, it may happen that the lessor might have purchased the property forty years back and/or long back and if the said approach is considered and thereafter the monthly compensation is determined, the same cannot be said to be a reasonable compensation. The aforesaid would be contrary to the law laid down by this Court in the case of **Atma Ram Properties (P) Ltd. (supra)** and further reiterated by this Court in the case of **Super Max International Private Limited and Ors., (supra)**. C D E F G H

7.1 As observed and held by this Court in the case of **Atma Ram Properties (P) Ltd. (supra)**, from the date 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. F G

7.2 The decision in the case of **Atma Ram Properties (P) Ltd. (supra)** has been subsequently followed by this Court in the case of **Super Max International Private Limited and Ors., (supra)**. In the said decision, it is further observed and held that in fixing the amount H

- A 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. Therefore, in a revision/appeal preferred by the tenant, who has suffered an eviction decree, the appellate/revisional court while staying the eviction decree can direct the tenant to pay the compensation for use and occupation of the tenancy premises upon the contractual rate of rent and such compensation for use and occupation of the premises would be 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. In the present case, the High Court has not done that exercise and has determined the compensation considering
- B the market value / value at which original respondent No. 19 acquired the rights of the suit property for a sum of Rs. 5.50 cores and thereafter, considering estimated return @ 6.5% per annum, the High Court has determined/awarded the compensation for use and occupation of the premises by the tenant @ Rs. 2,50,000/- per month. The aforesaid method adopted by the High Court while determining the compensation cannot be accepted. The High Court was required to undertake exercise and to determine the compensation 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.
- C 7.3 Under the circumstances, the matter is to be remanded to the High Court for fresh determination of the compensation for use and occupation of the premises by the tenant, who has suffered the eviction decree, during the pendency and the final disposal of the revision application by the High Court.
- D 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 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
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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 to the aforesaid extent. No costs.

Devika Gujral

Appeal partly allowed.