



2025:DHC:959



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 14.02.2025*+ **RC.REV. 157/2022**

DARSHANA BHOLA & ORS.

.....Petitioners

Through: Mr. Manu Sishodia and Ms. Hina
Rajput, Advs. with Petitioner No. 3.

versus

SMT. POONAM SAXENA

.....Respondent

Through: Mr. Arun Kumar Sharma, Ms.
Vandana Sharma, Mr. Varun Sharma,
Ms. Yogita with Ms. Poonam, Advs.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM Appl.25773/2024[Seeking vacation of stay]**

1. This is an Application filed on behalf of the Respondent seeking vacation of stay.
2. A Coordinate Bench of this Court by its order dated 14.07.2022 had directed that the execution of the Impugned Order shall remain stayed till the next date of hearing. This position has continued as is, however no user and occupation charges are being paid by the Petitioners/tenants.
3. This Court by its order dated 03.02.2025 after examining the issues as raised in the present Petition had passed the following directions:

"3. So far as concerns the landlord-tenant relationship and the ownership of the subject premises, the same are not under challenge. The only challenge as is raised by the Petitioners/tenants is that the rental for the subject premises is Rs.15,000/- per month and thus relying on the provisions of Section 3(c) of the Delhi Rent Control Act, 1958, it is contended that the same is not applicable to the facts of the present Petition and hence the Eviction Petition was not maintainable.

3.1 On the aspect of bona fide need, as is set out in the Eviction Petition, the same is for the residential requirement of the Respondent/landlord herself



and her family.

3.2 On the aspect of availability of alternate suitable accommodation, learned Counsel for the Petitioners/tenants submits that there is an infirmity with the Impugned Order. It is the contention of the Petitioners/tenants that there are alternate suitable accommodations available with the Respondent/landlord which can be utilized for the bona fide need. It is averred that the property no.3045, Sita Ram Bazar, Delhi [hereinafter referred to as "property no.3045"] in which the Respondent/landlord is currently residing is owned by the Respondent/landlord and her family and is not a tenanted property. Further, a government accommodation is also available with the Respondent/landlord.

4. The learned Trial Court relying on the record produced by PW2, official from MCD has held that no government accommodation is available with the Respondent/landlord. It was further held that Petitioners/tenants have failed to prove on record that property no. 3045 is owned by the Respondent/landlord or her family members."

3.1 This Court had thereafter directed the parties to file their appropriate documents in support of their respective contentions *qua* user and occupation charges.

4. Learned Counsel for the Petitioners, on instructions from Petitioner No. 3, submits that the Petitioners are not in a position to pay any user and occupation charges. He further submits that he requires four months additional time to vacate the subject premises.

5. Learned Counsel for the Respondent, on the other hand, submits that the Respondent is a widowed lady (who remains physically present before the Court on every hearing) and she herself is residing in a rented accommodation where she is paying the rental of Rs. 20,000/- per month since she has no other accommodation, except the tenanted premises.

6. In matters wherein a tenant endeavours to seek a stay on an eviction order, it is deemed equitable, and reasonable that said tenant be directed by the High Court to provide compensation to the landlord. This compensation



serves to counter potential adverse effects suffered by the landlord due to the delay or suspension of the eviction order. This view is articulated by Supreme Court in *Martin & Harris Private Limited and Another v. Rajendra Mehta and Others*¹ while relying on the *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*² case and reads as follows:

“17. In Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. [Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705], this Court held that the appellate court does have jurisdiction to put reasonable terms and conditions as would in its opinion be reasonable to compensate the decree-holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent court, 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 in present and earn the profit if the tenant would have vacated the premises. The Court has explained that because of pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have 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 later date.“

[Emphasis supplied]

6.1 The Supreme Court in *Atma Ram* case, has laid down that once an order for eviction has been passed against a tenant and the tenant continues in possession of the tenanted premises, such tenant is required to pay use and occupation charges to the landlord at the market rate applicable to “like” premises situated in the vicinity, until the disposal of the Petition impugning such order of eviction.

6.2 It has further been held in the *Atma Ram* case that this interim compensation is granted based on the discretion of Court in its judicial

¹ (2022) 8 SCC 527

² (2005) 1 SCC 705



wisdom, to offset the detrimental effects of prolonged litigation on landlord. The relevant extract reads as follows:

“9. Robust common sense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record — all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in *Olga Tellis v. Bombay Municipal Corpn.* [(1985) 3 SCC 545] : (SCC p. 574, para 35)

“Common sense which is a cluster of life’s experiences, is often more dependable than the rival facts presented by warring litigants.”

[Emphasis supplied]

6.3 A similar view has been taken by the Supreme Court in the cases of *State of Maharashtra and Anr. v. Super Max International Private Limited and Ors.*³; *Sumer Corp. v. Vijay Anant Gagan & Ors.*⁴ and *Heera Traders v. Kamla Jain*⁵. It has also been held that in fixing the interim compensation/use and occupation charges, the Court would exercise restraint and not fix excessive, fanciful or punitive amount. However, the Appellate/Revisional Court while staying an eviction decree can direct payment of such compensation for continued use of the premises and the compensation would be at the same rate of rental at which the landlord would have been able to get if he had let out such premises after they were vacated by the tenant. It has been held that the direction to pay *mesne profits* or use and occupation charges, will depend on the facts and circumstances of each case including the location of the property as well as its nature whether it is a commercial or residential area.

³ (2009) 9 SCC 772.

⁴ 2022 SCC Online SC 1548.

⁵ 2022 SCC Online SC 220.



7. The record reflects that despite interim protection granted by this Court which is extended for the last 2.5 years, concededly no market rent/damages are being paid to the Respondent. The Petitioners have also instructed their Counsel that they are not in a position to pay the same. This Court does not deem it apposite to continue the interim protection granted to the Petitioners on 14.07.2022. Accordingly, CM Appl. 30749/2022 stands dismissed.

8. The Respondent is at liberty to take recourse to appropriate proceedings for recovery of possession, recovery of arrears and for recovery of the full user charges/damages from the Petitioners at market rate for the period after the date of the Eviction Order, in accordance with law.

9. The present Application is accordingly disposed of.

CM Appl. 19347/2024*[Seeking directions for continuous of the interim order dated 14.07.2022]*

10. This is an Application filed on behalf of the Petitioner seeking directions for the continuation of interim order dated 14.07.2022 till further orders.

11. Given the order passed today in CM Appl.25773/2024, the present Application has become infructuous and is accordingly dismissed.

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12. Learned Counsel for the Petitioners requests for an accommodation to make his submissions on the merits of the case.

13. Both parties seek and are granted time to file their respective written synopsis, not exceeding three pages each, at least one week before the next



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date of hearing, along with the compilation of judgments, if any, they wish to rely upon.

13.1 All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

14. At his request, list on 29.07.2025.

15. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

FEBRUARY 14, 2025/r

[Click here to check corrigendum, if any](#)