

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7402 OF 2015

Mohammad Moizul Hasan s/o Abdul Aziz,
Age: 32 years, Occ: Service,
R/o. Plot No. 19, Madina Beef Shop,
Silk Mills Colony, Aurangabad & ors ...Petitioners

versus

Seema Quazi w/o Mohammad Ismail,
Age: 46 years, Occ: Household,
R/o. Silk Mills Colony, Aurangabad ...Respondent

.....
Mr. V.I. Thole, Advocate for petitioners
Mr. A.D. Kasliwal, Advocate for respondent
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CORAM : N.W. SAMBRE, J.

DATE : 23rd NOVEMBER, 2015

ORAL ORDER :

Special Civil Suit No. 56 of 2013 came to be decreed on
18/12/2014 by 7th Joint Civil Judge, Senior Division, Aurangabad with
following order:

- “1. The suit is partly decreed with costs.
2. The defendants to hand over vacant possession
of the suit house to the plaintiff within 30 days
from the date of judgment.
3. The defendants do pay jointly and severally
Rs.13,500/- (Rupees Thirteen Thousand Five
Hundred only) to the plaintiff towards damages.

4. Defendant nos. 1 to 3 do pay jointly and severally @ Rs.4,500/- per month to the plaintiff from the date of suit till recovery of possession of the suit house.
5. Decree be drawn up accordingly.”

Against the above order, the defendants preferred an appeal bearing Regular Civil Appeal No. 32 of 2015. In the said appeal, an application came to be moved by defendant Nos. 4 and 5 seeking stay to the judgment and decree. Learned lower appellate Court, while entertaining Regular Civil Appeal No. 32 of 2015, by an order dated 25/06/2015 granted stay to the execution of the judgment and decree referred supra, however, directed present petitioners-appellants to deposit the amount ordered by learned trial Court within period of four weeks, which was permitted to be withdrawn by original plaintiff-respondent to the appeal.

2. The order of stay was made conditional, as in case, the amount is not deposited, the stay shall stand vacated.

3. The order directing present petitioners to deposit the amount is questioned in the petition.

4. Having perused original decree, it is required to be noted

that the decree that was passed is money decree, wherein amount of Rs.13,500/- was directed to be paid by the defendants to the plaintiff towards damages and defendant Nos. 1 to 3 were directed to pay jointly and severally Rs.4500/- per month to the plaintiff. Learned Counsel for petitioners-defendant Nos. 4 and 5 would urge that defendant Nos. 4 and 5 are receiving maintenance from the plaintiff and as such, the amount as ordered by learned trial Court by judgment and decree dated 18/12/2014 of Rs.4500/- per month is without any basis and without taking into account inability of defendants to pay the said amount.

5. From the submissions of respective parties, it could be gathered that there is dispute in relation to the property pending between the parties. Learned trial Court, while ordering payment of Rs.4500/- per month, was alive to the facets of the matter including that ability of defendant Nos.1 to 3 to pay the amount. Learned lower appellate Court thereafter, having regard to the fact that petitioner Nos. 4 and 5 are in possession of property, has granted stay to the execution of decree of eviction/possession, however, directed to pay the amount.

6. In my opinion, the submission that is made before the Court below that defendant Nos. 4 and 5 are getting maintenance

from the other parties cannot be termed as exception to the payment of amount as ordered by learned trial Court, as from the order of the appellate Court and trial Court, there appears to be appropriate application of mind and consideration by the Courts.

7. In that view of the matter, view taken by District Judge while deciding application Exhibit-5 for grant of stay is in tune with the facts and evidence that was brought on record. No interference is called for. The writ petition fails, same stands dismissed.

[N.W. SAMBRE, J.]