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

WRIT PETITION NO.11790 OF 2014

Chandulal Hiralal Agrawal.	..Petitioner
-Versus-	
Kishanprasad Motilal Devidan.	..Respondent

.....
Mr.PS.Paranjape, Advocate for the Petitioner.
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th January, 2015

Per Court:

1 The Petitioner is the original Defendant in RCS No.179/2011. The same has been decreed by the judgment dated 11.07.2014. The Petitioner preferred an appeal being RCA No.2/2014 along with an application below Exhibit-6 seeking stay to the implementation of the judgment and decree till the hearing in the appeal.

2 By an order dated 13.11.2014, impugned in this Writ Petition, the application Exhibit-6 was allowed subject to the conditions imposed in the order below paragraph 25 which is reproduced herein below:-

“1. *The application is allowed and the stay is granted to the execution of the judgment and decree dated 11.07.2014, passed in RCS No.179/2012 by 4th Jt. Civil Judge J.D. Jalna, subject to following conditions.*

(i) Appellant shall furnish security of Rs.25,000/- that any order passed in this appeal shall be binding upon him.

(ii) Appellant shall pay compensation of Rs.5000/- p.m. from the date of decree to respondent. This compensation shall be in addition to the regular rent.

(iii) the security shall be furnished and the arrears of compensation and rent be deposited in this Court within a period of one month i.e. on or before 14.12.2014.

(iv) The compensation shall be kept lying in the Court and it shall be paid to the party who succeeds in the appeal. The arrears of compensation be kept in FDR so as to fetch more interest. Thereafter, the compensation amount accumulated after every three months be kept in FDR. (The parties may opt for a more beneficial option in this respect).

2. *Inform learned Trial Court accordingly.”*

3 The Petitioner is aggrieved by sub-clauses (i) and (ii) below clause 1 of the order whereby the Petitioner is directed to furnish security of Rs.25000/- and pay compensation at the rate of Rs.5000/- per month from the date of decree to the Respondent. The said compensation was in addition to regular rent. It has also been directed that the compensation shall be kept in the Court and shall not be disbursed until the decision in the appeal.

4 The grievance of the Petitioner is, therefore, restricted to the compensation directed to be paid and the security amount. It is submitted that the rent amount was Rs.400/- as was fixed in the year 2002. The same could be at the most enhanced to Rs.800/-. There is no logic behind

the direction to the Petitioner to pay Rs.5000/- per month in addition to the rent payable. It is, therefore, submitted that the conditions under sub-clauses (i) and (ii) of clause (1) of the impugned order need to be modified.

5 This Writ Petition challenges an interlocutory order dated 13.11.2014. The Appeal has been instituted on 13.08.2014. In my view, rather than entertaining this Writ Petition at this stage, when the appeal is pending and rather than expressing an opinion as regards the enhancement of rent from Rs.400/- fixed in the year 2002 to Rs.5000/- ordered by the Court in November, 2014 (after 12 years), ends of justice would be met if the Appeal is directed to be heard expeditiously.

6 In my view, since the compensation directed to be paid under clause 1(ii) is to be kept in a fixed deposit receipt as per the direction under clause 1(iv) of the impugned order, the apprehension of the Petitioner that once the amount is paid to the Respondent, it would be irretrievable, is put to the rest.

7 In the light of the above and without expressing any opinion on the merits of the matter, since the appeal is pending, this Writ Petition is disposed of with a direction to the learned Principal District Judge,

Jalna to decide the RCA No.2/2014 as expeditiously as possible and preferably on or before 30.04.2015. No order as to costs.

(RAVINDRA V. GHUGE, J.)