

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5003 OF 2015**

Shri Meenakshi Manoj Shaha  
and Anr

Petitioners

Vs

Lalit Ambal Shah and Anr

.. Respondents

Mr. Vishal Kanade i/b Dharmesh S. Jain, Advocate for the petitioners.

Ms. Nilima Gokhale a/w Mr A.J.Kandarkar, Advocate for respondent no.1/Orig.Plaintiff.

CORAM : R.G.KETKAR,J.

DATE : 10/06/2015

**PC:**

1. Heard Mr. Vishal Kanade, learned counsel for the petitioners and Ms. Nilima Gokhale, learned counsel for respondent no.1 at length.

2. Rule. Notice of rule on respondent no.2-original defendant no.3 is dispensed with as no relief is claimed against him. Ms. Gokhale waives service on behalf of respondent no.1. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up finally.

3. By this Petition under Article 227 of the Constitution of India, original defendants no.1 and 2 have challenged the Judgment and order dated 13.3.2015 passed by the learned 11<sup>th</sup> Jt Civil Judge, Sr Dn., Pune below Exhibit-5 in Civil suit No. 1797 of 2014 as also the order dated 2.5.2015 passed by the learned

Adhoc District Judge-3, Pune, below Exhibit-5 in Misc. Civil Appeal No.162 of 2014. By order dated 13.3.2015, the learned trial Judge partly allowed the application taken out by respondent no.1, hereinafter referred to as 'plaintiff', and ordered status-quo ante with respect to suit property including residential premises and shop premises. The learned trial Judge ordered to lock these premises by the plaintiff till decision of the suit on merit subject to payment of monthly rent as agreed to be paid to original landlord-respondent no.2, herein, or his legal heir and representative, as the case may be. Aggrieved by this decision, the petitioners, hereinafter referred to as defendants no.1 and 2, preferred Misc. Civil Appeal. During pendency of the Appeal, they took out application Exhibit-5 for stay of the trial Court's order. By order dated 2.5.2015, the learned District Judge rejected the said application.

4. Mr. Kanade, upon taking instructions from defendants no.1 and 2 who are present in the Court and Ms Gokhale, upon taking instructions from the plaintiff who is also present in the Court, have suggested workable arrangement to be observed by the parties during the pendency of the suit. It is agreed between the parties that defendants no.1 and 2 will occupy residential premises situate on the first floor and the plaintiff will pay rent to respondent no.2/defendant no.3-landlord. The plaintiff will occupy shop premises situate on the ground floor. He will also pay

Rs.4000/- per month from June 2015 to defendant no.1 till the decision of the suit. The plaintiff will also pay rent of the shop premises situate on the ground floor. The learned counsel appearing for the parties further submit that this arrangement is without prejudice to their rights and contentions in the suit. It is expressly made clear that if the plaintiff commits two consecutive defaults in payment of Rs.4000/- per month to defendant no.1, liberty is reserved to defendants no.1 and 2 to move this Court for seeking modification of this order. Learned counsel appearing for the parties further agree that both the parties will not create third party interest during the pendency of the suit.

5.. In view thereof, by consent of the parties, the Petition is disposed of in the following terms:

- (i) Defendants no.1 and 2 will occupy residential premises situate on the first floor of the suit property.
- (ii) The plaintiff will occupy shop situate on the ground floor of the suit property. The plaintiff will pay rent to respondent no.2/defendant no.3-landlord of first floor residential premises as also ground floor where the shop is situate.
- (iii) The plaintiff will pay Rs.4000/- per month to defendants 1 and 2 with liberty to defendants no.1 and 2 to withdraw the said amount unconditionally. Payment shall commence from June, 2015 and shall be paid on or before 10<sup>th</sup> day of each succeeding

month. In case the plaintiff commits two consecutive defaults, liberty is reserved to defendants no.1 and 2 to move this Court for modification of this order. Both the parties shall not create third party interest in the suit property in any manner whatsoever. It is expressly made clear that the above order is passed without prejudice to the rights and contentions of the parties in the pending proceedings.

(iv) In view thereof, the impugned orders passed by the Courts below stand substituted in the aforesaid terms. Misc. Civil Appeal filed by defendants no.1 and 2 stands disposed of in the aforesaid terms. Parties shall produce authenticated copy of this order before the learned District Judge for formally disposing of the Appeal. Liberty to move defendants no.1 and 2 to move the trial Court for expeditious disposal of Exhibit 9A application is granted. It is expressly made clear that I have not expressed any opinion on merits of the case.

(R.G.KETKAR, J.)