

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

WRIT PETITION NO.6486 OF 2016

Mrs Yasmin Behram Irani

..Petitioner.

Vs

The Trustees of the Funds and
Properties of the Parsi
Punchayet Mumbai and Ors

.. Respondents

Mr.Tushar V. Dahibawkar i/b M/s Dahibawkar & Co, Advocates for
Petitioner.

Mr. Mihir Nerurkar i/b Mulla and Mulla & CBC, Advocates for
Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 17/06/2016**

PC:

1. Heard Mr.Tushar Dahibawkar, learned counsel for the petitioner and Mr. Mihir Nerurkar, learned counsel for the respondents at length.
2. Rule. Mr. Nerurkar waives service on behalf of the respondents. 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, the petitioner, hereinafter referred to as 'defendant', (Appellant before the Appellate Court) has challenged the Judgment and order dated 27.4.2016 passed by the Appellate

Bench of the Small Causes Court at Bombay below Exh.6 in Appeal No.93 of 2015. By that order, while granting stay to the execution of eviction decree, the Appellate Court fixed interim compensation at the rate of Rs.18000/- per month from the date of trial Court's decree, namely, 31.1.2015. The Appellate Court directed the petitioner to clear arrears of interim compensation at the rate of Rs.18000/- per month by 7.6.2016 and to continue to pay interim compensation with effect from 1.6.2016 at the rate of Rs.18000/- per month uptodate on or before 10th day of each month as and when it becomes due. On depositing the amount of the interim compensation, decree of possession only was stayed till disposal of the appeal. It was further made clear that in case the petitioner fails to comply the order punctually, in that event, stay shall stand vacated automatically without passing further order.

4. Mr. Dahibawkar states that the petitioner is present in the court. Upon taking instructions from her, he submits that the petitioner is agreeable to pay the interim compensation at the rate of Rs.12000/- per month. Mr. Nerurkar, upon taking instructions from Ms. Mugda Sawant, Senior Executive (Legal), Constituted Attorney of Respondent-Trust, states that without prejudice to the rights and contentions of the respondents, the respondents are agreeable to the petitioner paying interim

compensation at the rate of Rs. 12000/- per month.

5. Having regard to the fact that the suit premises, namely, flat admeasuring 595 sq.ft., is situate on second floor, "Godrej baug", Off. Nepeansea Road, Mumbai 400 026, I find that Rs.12000/- per month would be reasonable interim compensation. Mr. Dahibawkar states that the petitioner is in arrears of the interim compensation of Rs. 2,16,000/- at the rate of Rs.12000/- per month. He assures that in four equal installments she will clear the arrears within eight weeks from today and also go on paying directly to the respondents regularly Rs.12000/- per month from 1.7.2016, on or before 10th day of next succeeding months. In view thereof, by consent, the impugned order is modified as under:

- (i) Petitioner shall pay interim compensation at the rate of 12000/- per month from 31.1.2015 till the disposal of the Appeal.
- (ii) Petitioner shall clear arrears of the interim compensation at the rate of Rs.12000/- per month within eight weeks from today in following manner; The petitioner shall pay :
 - (a) Rs.54000/- within two weeks from today;
 - (b) Rs.54000/- within four weeks from today;
 - (c) Rs.54000/- within six weeks from today;
 - (d) Rs.54000/- within eight weeks from today;
- (iii) It is made clear that in case the petitioner commits two

consecutive defaults in paying the arrears of interim compensation, the interim relief shall stand vacated without further reference to the court.

(iv) The petitioner shall pay the interim compensation with effect from 1.7.2016 at the rate of Rs.12000/- per month, on or before 10th day of next succeeding months. If the petitioner fails to comply this condition, the interim order shall stand vacated without further reference to the Court.

(v) The impugned order stands modified accordingly. Rule is made partly absolute, with no order as to costs.

(R.G.KETKAR, J.)