

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

WRIT PETITION NO.7097 OF 2014

Smt. Shamin Vikar Hussain Shaikh

.. Petitioner

Versus

Vazir Hussain Bacchubhai Shaikh and others

.. Respondents

Pratibha Shelake h/f Adv. P. J. Thorat, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 16th JANUARY, 2015

PC.

1. The order dated 11.04.2014 passed by the Learned Ad-hoc District Judge-2 & Additional Session Judge, Kalyan allowing the application Exh.5 filed by the Respondent No.1/Appellant for stay pending the Appeal is taken exception to by way of the above petition.

2. By the impugned order dated 11.04.2014, the execution proceedings have been stayed. The decree which has been challenged by way of the Appeal is one for possession which is granted in favour of the Petitioner. In my view, having regard to the nature of the decree, the order passed by the Lower Appellate Court staying the execution of the decree by the impugned order cannot be found fault with. Hence, no case for interference in the writ jurisdiction of this Court is made out. However, it

would be open for the Petitioner to file an application based on the judgment of the Apex Court in **2005 (1) SSC 705** in the matter of **Atmaram Vs. Federal Motors** for the Petitioner being paid an enhanced amount pending the Appeal, if any such application is filed. The same would be tried on its own merits and in accordance with law.

[R.M. SAVANT, J]