

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10486 OF 2015

Laxman Rambhau Kadam : Petitioner.
Versus
Smt. Subhadra Munshi Dayashankarlal and ors. : Respondents.

Mr. V E Pereira for the Petitioner.
Mr. R D Mishra for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 17th November 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 23/09/2015 passed by the Appellate Bench of the Small Causes Court at Bombay by which order the Application (Exhibit 22) filed by the original Plaintiffs i.e. the Respondents in the Appeal came to be partly allowed and the Defendant/Appellant was directed to pay interim compensation at the rate of Rs.1500/- per month with effect from the date of the impugned judgment and decree i.e. 06/10/2007 till disposal of the appeal. The said amount was to be paid by 21/10/2015. However, it is an undisputed position that the said amount has not been paid. The said amount has been fixed and has been directed to be paid in terms of the judgment of the Apex Court in Atma Ram Properties (P) Ltd. V/s. M/s. Federal Motors Pvt. Ltd. reported in 2005(1) RCJ 23(SC) as a condition for grant of stay to the decree of eviction. It appears that the Petitioner herein i.e. the original Appellant/Defendant before

the Appellate Bench of the Small Causes Court had filed an Application (Exhibit 28) for permission to deposit the rent due from July 2014 till April 2015 at the rate of Rs.18/- per month by condoning delay for the same. The said application was rejected by the Appellate Bench of the Small Causes Court on the same day i.e. on 23/09/2015 and the Appellate Bench vacated the stay to the execution of judgment and decree dated 06/10/2007. However, as indicated above, by the impugned judgment and order that is passed on the same day i.e. on 23/09/2015 on the application (Exhibit 22) filed by the original Plaintiffs i.e. the Respondents to the Appeal filed by the Appellant/Defendant directing the Appellant/Defendant i.e. the Petitioner herein to pay interim compensation at the rate of Rs.1500/- per month. On being queried whether the Petitioner is willing to deposit the said amount so that grant of stay can be restored, the learned counsel appearing for the Petitioner Shri Pereira showed his client's unwillingness to deposit the said amount. Since the said amount is directed to be deposited in terms of the judgment in *Atma Ram Properties (P) Ltd.'s* case (supra) and since the said amount would lie in deposit pending the Appeal, no case for interference in respect of the said aspect is made out.

2 The impugned order is also challenged on the ground that the directions could not have been issued by the Appellate Court that in the event the Appellant/Defendant i.e. the Petitioner herein fails to deposit the said

amount, the Appeal would stand dismissed. It is the submission of the learned counsel for the Petitioner that at the highest if the Appellant/Defendant does not deposit the amount the stay would stand vacated but that would not render the Appellant/Defendant remedyless in so far as the decree of eviction that has been passed is concerned. In my view, the Appellate Bench of the Small Causes Court has erred in issuing the direction as issued vide clause (5) of the impugned order, therefore the direction as contained in clause (5) of the impugned order dated 23/09/2015 would have to be set aside and is accordingly set aside. In the event the Appeal has stood dismissed on account of the direction as contained in clause (5) of the impugned order, the same would stand restored to file for being heard on merits. With the aforesaid directions the above Writ Petition is disposed of.

[R.M.SAVANT, J]