

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 5353 OF 2014  
WITH  
WRIT PETITION NO. 11029 OF 2014

SHANKARLAL BISHANLAL KAMAD AND OTHERS  
VERSUS  
SUBHASHCHANDRA MANIKCHAND BORUNDIYA

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Advocate for Petitioners : Mr. Bajaj Anil S.

Advocate for Respondents : Ms. M.G. Biradar h/f Mr. Katneshwarkar P. R.

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**CORAM : V. K. JADHAV, J.**  
**DATED : 13<sup>th</sup> JANUARY, 2016**

**PER COURT:-**

1. By consent of learned counsel for respective parties, heard finally at admission stage.

2. The respondent-plaintiff instituted suit bearing R.C.S. No. 255 of 1992 for eviction against the present petitioners, on the ground of default in payment of rent and bonafide need. Learned Judge of trial court by judgment and order dated 20.12.2013 decreed the suit. Being aggrieved by the same, the petitioners-original defendants filed Regular Civil Appeal No.6 of 2014 in the District Court at Jalna, which is pending for adjudication. The petitioners alongwith the appeal, filed an application Exh.5 seeking stay to the judgment and decree passed by the trial court. The learned District Judge, by impugned order dated 25.3.2014 was pleased to grant stay on the condition to deposit agreed

rent as well as Rs.4000/- p.m. as additional amount and further directed the petitioners not to create any third party interest on the suit property. The petitioners, as against the condition of imposing additional amount of Rs.4000/-, has approached this Court by filing writ petition No. 5353 of 2014. The respondent-plaintiff has also filed accompanying writ petition No. 11029 of 2014 for enhancement of the said amount.

3. Learned counsel for the petitioners submits that the learned District Judge-1 Jalna has relied upon the judgment in the case of ***M/s. Atma Ram Properties (P) Ltd. vs. M/s. Federal Motors Pvt. Ltd. reported in 2005 (1) Civil Court cases 454*** and imposed the said condition in the said order. Learned counsel has pointed out that in the case relied upon by the lower appellate court the property involved therein was sub tenanted property and tenant was earning the rent more than the rent being paid to the landlord. However, in the case in hand, learned Judge of the trial court has recorded the finding in negative to issue No.3. Learned Judge of trial court has concluded that petitioners-defendants have not erected permanent structure on the suit premises. Learned counsel further submits that the property was given on rent in the year 1953. In view of this, learned counsel submits that the condition imposed by the lower appellate court directing the petitioner to pay Rs.4000/- p.m. in addition to agreed rent is unwarranted and uncalled for.

4. Learned counsel for the respondent submits that now the property has come in the heart of city and the petitioner runs grocery shop in the suit premises and presently he is earning much more than which he was previously earning.

5. Considering the facts and circumstances of the case, it would be just and proper if the condition imposed by the lower appellate court is modified to the effect that the petitioners/appellants to deposit an amount of Rs.2000/- per month in addition to the agreed rent.

6. In view of the above, writ petition No. 5353 of 2014 is disposed of with modification that the petitioners/appellants to deposit the amount of Rs.2000/- per month in addition to agreed rent in the court and the rest of the order passed by the learned Judge of lower appellate court dated 25.3.2014 in Regular Civil Appeal No. 6 of 2014 stands confirmed.

7. In the light of above, nothing remains to be decided in writ petition No. 11029 of 2014 and both the writ petitions are hereby disposed of. No costs.

**( V. K. JADHAV, J.)**

rlj/