

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9767 OF 2016

Sanjay Pandurang Edake

..PETITIONER

VERSUS

Ranjana Ramkrushna Urmude

..RESPONDENT

....
Mr. A.G. Ambetkar, Advocate for petitioner.

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**CORAM : T.V. NALAWADE, J.
DATED : 21st SEPTEMBER, 2016**

ORDER :

1. This petition is filed to challenge the order dated 16th September, 2016 made by learned District Judge-2, Ahmednagar on Exhibit 7 in R.C.A. No. 265 of 2015. Heard learned Counsel for petitioner.

2. The appeal was filed by the present petitioner to challenge the judgment and decree of R.C.S. No. 547 of 2011 which is decided by learned Civil Judge, Senior Division, Ahmednagar. The decree of possession is given in favour of the plaintiff and further direction is given to the defendant/present petitioner to pay compensation @ Rs.2,000/-

per month and the compensation is payable from 05th December, 2009 till delivery of possession of the suit property to plaintiff. The defendant wanted stay to the execution of this decree. Conditional stay was granted by the District Court and defendants were directed to deposit 50% of the amount of compensation, calculated @ Rs.2,000/- per month and that amount comes to Rs.81,000/-. Time of three days was given to deposit this amount and further direction was given to deposit Rs.2,000/- per month for further period starting from 01st September, 2016 till disposal of the appeal. The remaining amount of Rs.81,000/- was to be paid within two months from the date of order.

3. The aforesaid operative order made by Trial Court shows that there is money decree against the appellant. In view of the provision of Order 41 of the Code of Civil Procedure, at the time of entertaining the appeal, the Court was expected to see that provision of Order 41 Rule (1) (iii) of the Code of Civil Procedure is complied with. Further, relief of stay is also claimed and stay is a discretionary relief.

4. In view of these circumstances, this Court holds that there are no merits in the present proceedings. There is no need to issue notice to the other side. Learned Counsel for the petitioner submitted that the time

given by the District Court of three days is now over and so further time of three days be given to the present petitioner to deposit the amount of Rs.81,000/- as directed by the District Court and the petitioner is ready to deposit the said amount. In view of this submission, this Court holds that it will be open to the District Court to consider such prayer and allow the petitioner to deposit the amount within three days from today i.e. from 21st September, 2016.

5. In the aforesaid terms, the present petition is disposed of as dismissed.

(T.V. NALAWADE, J.)

SSD