

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.3996 OF 2016

Shri. Shantilal Liladhar Shah and others .. Petitioners

Versus

Smt. Kavita Rajendra Lunkad

(Since deceased through her legal heirs) .. Respondents

Mr. A. S. Khandeparkar i/by Khandeparkar & Associates, for the
Petitioners.

Mr. R. P. Khobragade, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 4th MARCH 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 23.12.2015 passed by the Appellate Bench of the Small Causes Court, by which order, the application Exh.6 for stay pending the Appeal came to be allowed on the condition that the Appellant No.1 i.e. the Petitioner No.1 shall pay interim compensation at the rate of Rs.15,000/- per month to the Respondents with effect from 30.07.2012 till the decision of the Appeal. The said order has been challenged principally on the ground that in another Appeal the interim stay granted to the Petitioners is on the condition of deposit of interim compensation at the rate of Rs.15,000/- per month which order was passed by a Learned Single Judge

of this Court whilst modifying the order dated 02.05.2012 passed by the Appellate Bench of the Small Causes Court. The instant Appeal being No.47 of 2012 is arising out of another suit being RAE & R Suit No.379/550 of 2016 filed by the Respondents herein on the ground of non-user. The earlier deposit is in Appeal No.39 of 2011 arising out of RAE Suit No.928/1605 of 2001 which is based on the ground of arrears of rent. Since the suit premises are one and the same, the Petitioners/Appellants in Appeal No.47 of 2012 cannot be asked to deposit interim compensation twice over. Since they are already depositing at the same rate in the said Appeal No.39 of 2011, the impugned order in so far as it directs to deposit at the rate of Rs.15,000/- in Appeal No.47 of 2012 would have to be set aside to the said extent. The amount deposited in the Appeal No.39 of 2011 at the rate of Rs.15,000/- would enure to the benefit of the Petitioners in the instant Appeal also. With the aforesaid directions the Writ Petition is disposed of.

2. At the request of the Learned Counsel for the parties the hearing of the two Appeals is expedited.

[R.M. SAVANT, J]