

Mr. P. S. Dani, Senior Advocate a/w. Mr. Sachin S. Punde for Petitioners.
Mr. Vikram Chavan a/w. Ms Sheetal Thakur for Respondent.

P.C. :

Heard Mr. Dani, learned Senior Counsel for petitioners and Mr. Chavan, learned Counsel for respondent at length. Rule. In view of the orders dated 02.09.2016, 21.09.2016 and 13.10.2016, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'decree holders', have challenged the judgment and order dated 07.11.2015 passed by the learned District Judge-01, Pune in Civil Revision Applications No.42 of 2014 and 43 of 2014. By that order, the learned District Judge allowed the Civil Revision Applications and quashed and set aside the judgment and order dated 06.12.2014 passed by the learned Judge, Small Causes Court, Pune below exhibit-17 in Darkhast No.28 of 2013. The learned trial Judge also set aside the order dated 06.12.2014 passed below exhibit-6 in Darkhast No.28 of 2013 issuing possession warrant. Respondent, hereinafter referred to as 'Judgment-debtor', had filed C.R.A.No.43 of 2014 challenging the order dated 06.12.2014

below exhibit-17 in Darkhast No.28 of 2013. Judgment-debtor filed C.R.A.No.42 of 2014 challenging the order dated 06.12.2014 below exhibit-6 in Darkhast No.28 of 2013. The relevant and material facts, giving rise to filing of the present Petition, briefly stated, are as under:

3. Keshav Ganesh Tambe Public Charitable Trust (for short 'Trust') was the erstwhile owner of house No.508 situate in Rasta Peth, Pune. On 28.11.1975, tenancy agreement was executed by the Trust in favour of L. K. Pujari, husband of judgment debtor. Judgment debtor's husband was let out 1200 sq.ft. area as more particularly described in the said agreement. The Trust executed Sale Deed in favour of the first decree-holder on 11.07.1995. The tenancy was terminated on 19.02.1996. On 23.07.1996, decree holder No.1 instituted Civil Suit No.482 of 1996 against the judgment debtor for possession of the suit premises on the ground of arrears of rent. On 26.02.1997, Suit was decreed ex-parte. Aggrieved by that decision, judgment-debtor preferred Civil Appeal No.1024 of 1997. During the pendency of that appeal, on 16.10.2001, parties entered into the consent terms. In pursuance of the consent terms, decree was also passed on 16.10.2001. Clauses 6 to 10 of the consent terms, which are relevant for deciding controversy raised in the Petition, read thus,

“6. That the judgment-debtor agrees, assures and promises to give on ownership basis built up area of 1200 sq.ft. located at same specific site, place and location where present Hotel stands, on payment of construction cost @ Rs.400=00 per sq.ft. The said amount of Rs.4,80,000=00 (Four Lacks Eighty thousand only) has been paid in full by the Appellant to the judgment-debtor at the time of this compromise and no further amounts are due from the Appellant to the judgment-debtors in consideration towards purchase of the said Hotel premises.

7. That the judgment-debtor shall ensure that the building plans shall be sanctioned by the Pune Municipal Corporation accordingly and no other member of the society or association shall take any objection to the conduct of Hotel business.

8. That the judgment-debtor undertakes to complete the construction of the Hotel premises within a period of 2 years from today, and to immediately handover the vacant and peaceful possession of the constructed hotel premises to the Appellant without demanding any additional payment of any nature whatsoever.

9. That the Appellate undertakes to pay agreed rent of Rs.313=50 per month regularly and without fail.

10. That the Appellant premises that she will hand over the vacant and peaceful possession of the suit lands together with structure there off to the judgment-debtors after sanctioning of the building plans and after the judgment-debtor actually and physically commences the work of construction of the building on the said land. In any case judgment-debtor shall hand over the possession of the fully constructed premises to the Appellant within a period of 9 months after such possession of tenanted premises is handed over by the Appellant.”

4. It is the grievance of the judgment-debtor that the decree-holders did not take any steps in pursuance of clauses 6 to 10, extracted hereinabove. On the contrary, they tried to forcibly dispossess the judgment debtor. Judgment-debtor, therefore, instituted Civil Suit No.467 of 2005 against the decree-holders for perpetual injunction restraining them from dispossessing her and her partners from the suit premises without following due process of law. On 04.02.2011, the learned trial Judge decreed the Suit and issued injunction restraining the decree-holders from causing any sort of obstruction to the peaceful possession and enjoyment of the judgment debtor over the suit premises, without following due process of law.

5. It is the further grievance of the judgment debtor that on 12.01.2013 and 31.01.2013, notices were issued on behalf of the decree-holders calling upon her to handover possession of the suit premises as per the consent terms. Decree-holders thereafter issued two separate notices on 06.03.2013 and in April 2013 seeking

possession of the suit premises and calling upon the judgment-debtor to vacate the suit premises. The grievance of the judgment debtor is that the decree-holders did not disclose any steps taken in pursuance of clauses 6 to 10 of the consent terms and straightway called upon her to vacate the suit premises and handover possession to them.

6. In the meantime, on 08.03.2013, the decree-holders filed Darkhast No.28 of 2013. Pending that Darkhast, they took out application exhibit-6 under Order 21, Rule 35 of C.P.C. for issuing warrant of possession. Judgment-debtor filed application under Section 47 of C.P.C. on 07.02.2014 for dismissal of the execution proceedings on the ground that decree is in-executable. By judgment and order dated 06.12.2014, the learned trial Judge rejected the application exhibit-17. Aggrieved by this decision, the judgment-debtor preferred C.R.A. No.43 of 2014. The learned trial Judge ordered possession warrant under Order 21, Rule 35 on the ground that application exhibit-17 filed by the judgment-debtor was dismissed. Aggrieved by this order, judgment-debtor preferred C.R.A.No.42 of 2014. The learned District Judge allowed revision applications, as indicated earlier. Aggrieved by these decisions, decree-holders have instituted the present Petition.

7. In support of this Petition, Mr. Dani submitted that the learned District Judge committed serious error in allowing the C.R.As. He has taken me through the impugned order. He submitted that in paragraph 10, the learned District Judge noted that the property in dispute was under reservation for the public purpose of Housing Dis-Housed (HDH). The reservation was deleted on 18.01.2011. He submitted that after deletion of the reservation, plans submitted by the

decree-holders were sanctioned and Commencement Certificate was issued on 30.11.2012. In pursuance of the consent terms, decree-holders repeatedly called upon the judgment-debtor to vacate the suit premises and handover possession. To that effect, notices were issued on 12.01.2013, 31.01.2013, 06.03.2013 and April 2013. Even Darkhast was filed on 08.03.2013. He has invited my attention to -

- (1) the steps taken by the Planning Authority, namely Municipal Corporation of the City of Pune (for short 'P.M.C.') under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'M.R.&T.P. Act');
- (2) sanction accorded by the State Government to modification proposed by the Corporation under Section 37(2) of the M.R.&T.P. Act on 18.01.2011;
- (3) Commencement Certificate and sanctioned plans dated 30.11.12;
- (4) application exhibit-6 filed by the decree-holders;
- (5) application exhibit-17 filed by the judgment-debtor; and
- (6) replies filed to the applications.

8. Mr. Dani submitted that the learned District Judge committed several errors apparent on the face of the record. He submitted that the learned District Judge relied upon the decision of the Apex Court in the case of ***Bibekanand Bhowal (since deceased) vs. Satinder Mohan Deo***, AIR 1996 SC 1985 and held that the decree passed in terms of the consent terms was not for possession. Judgment-debtor cannot be evicted in the execution proceedings. He submitted that the impugned order is, therefore, liable to be set aside.

9. On the other hand, Mr. Chavan supported the impugned order. He submitted that the compromise decree was not absolute but

conditional. The ex-parte decree dated 26.02.1997 passed in Civil Suit No.482 of 1996 was substituted by the conditional compromise decree dated 16.10.2001 passed in Civil Appeal No.1024 of 1997. He submitted that clauses 6 to 8 of the compromise decree mandated that the decree-holders should perform certain obligations within the stipulated period. For instance, by clause 6, the decree-holders were obliged to give 1200 sq.ft. area at the same specific site, place and location where present hotel stands on ownership basis. Under clause 7, decree-holders were under obligation to get the plan sanctioned from P.M.C. Under clause 8, the decree-holders were under obligation to complete the construction within 2 years from the date of the compromise and immediately handover the vacant and peaceful possession of the constructed hotel premises to the judgment-debtor without demanding any additional payment of any nature whatsoever. He submitted that the time stipulated in the conditional compromise decree is an essence of contract entered into between the parties. As the conditional compromise decree was not for possession, the decree-holders could not have sought possession without performing obligations cast on them within the stipulated time.

10. Mr. Chavan submitted that the conditional compromise decree has lapsed / frustrated after two years as during this period, decree-holders failed to perform their obligations within the stipulated time. Mr. Chavan submitted that in fact while entering into compromise, the decree-holders were fully aware of the fact that the property in dispute was under reservation for housing dis-housed (HDH). The said property was under reservation since 1987. He has invited my attention to the-

(a) extract of Development Plan for the City of Pune,

sanctioned on 05.01.1987;

(b) copy of the site plan showing C.T.S. No.508, Rasta Peth, Pune in the Development Plan which is under reservation for housing dis-housed (HDH);

(c) Development Agreement dated 26.04.2001 entered into by and between M/s. P. K. Deole and Associates (being the party of the first part) and M/s. Sai Development Corporation (being the party of the second part). The recital in that agreement shows that the property in dispute is reserved for the purpose of providing housing for dis-housed (HDH).

11. Mr. Chavan submitted that under the compromise decree dated 16.10.2001, decree-holders were required to complete the construction within 2 years from 16.10.2001 that is on or before 15.10.2003. decree-holders neither applied for sanction to P.M.C. nor followed up with P.M.C. for deleting H.D.H. reservation. decree-holders also did not seek extension of time stipulated in the compromise decree from Court for performance of obligations cast on them or for modification of the compromise decree. For the first time, decree-holders addressed a letter dated 21.09.2005 to the Municipal Commissioner of P.M.C. for suitably modifying D. C. Rules of P.M.C. on the lines of Mumbai Municipal Corporation.

12. He submitted that instead of complying terms and obligations of the conditional compromise decree, decree-holders issued two separate notices to the judgment-debtor on 06.03.2013 and April 2013 asking judgment-debtor to vacate and hand over possession of the suit property. In both the notices, decree-holders did not point out the difficulties faced by them for deleting HDH Reservation. He further

submitted that because of the conduct of the decree-holders, they are not entitled to any relief in this Petition. On one hand, decree-holders did not comply the obligations cast on them by the compromise decree and on the other, they forcibly attempted to take possession of the suit premises from the judgment-debtor. judgment-debtor was constrained to institute Civil Suit in 2005. decree-holders contested that Suit, which was eventually decreed in the year 2011. decree-holders also initiated criminal proceedings against the judgment-debtor under Section 138 of the Negotiable Instruments Act, 1881 alleging that the cheque issued by the judgment-debtor in the sum of Rs.4,80,000/- was dishonoured. The complaint was dismissed. In view of Section 8 of the Indian Evidence Act, 1872, the conduct of the decree-holders is relevant while deciding this Petition.

13. Mr. Chavan submitted that the learned trial Judge committed serious error in holding that the performance of obligations cast upon the decree-holders under the compromise decree was beyond their control. He further submitted that Darkhast proceedings instituted in the year 2013 is barred by law. He invited my attention to Darkhast No.28 of 2013 which is filed for executing decree dated 26.02.1997 passed in Civil suit No.482 of 1996. As the Darkhast is filed beyond 12 years i.e. on 27.02.2013, Darkhast is barred by limitation and as such, is liable to be dismissed. Mr. Chavan submitted that even otherwise, decree is inexecutable as the decree is not for possession. The decree also did not contemplate ejection of judgment-debtor in execution upon breach of any condition. He submitted that it is settled principle of law that conditional decree is not executable. decree-holders have to institute separate Suit either under Section 13(1)(hh) of the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947 (for short 'Bombay Rent Act') or 16(1)(i) of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). In support of this proposition, he relied upon ***Bibekanand Bhowal*** (supra) as also ***Assistant Custodian General of Evacuee Property Vs. Lila Devi, 1980 (4) SCC 224.***

14. Mr. Chavan submitted that the ex-parte decree dated 26.02.1997 passed in Civil Appeal No.1024 of 1994 was substituted by conditional compromise decree dated 16.10.2001, which is frustrated for breach of the obligation. He further submitted that the scope of revision under Section 34(4) of the Maharashtra Rent Act is wider than the scope of revision under Section 115 of C.P.C. Judgment-debtor had filed application under Section 47 of C.P.C. The learned trial Judge rejected the application against which no appeal lies. Apart from that, decree-holders filed application exhibit-6 for issuing warrant of possession under Order 21, Rule 35 of C.P.C., which is also not appealable order. In view thereof, judgment-debtor rightly invoked revisional jurisdiction by filing revision under Section 34(4) of the Act. It, therefore, cannot be said that Revision Applications preferred by the judgment-debtor are not maintainable. He, therefore, submitted that no case is made out for invocation of writ jurisdiction under Article 227 of the Constitution of India.

15. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Some of the facts, which are borne out from the record and which are not in dispute, are as under:

- a. Decree-holders instituted Civil Suit No.482 of 1996 against the judgment-debtor under the provisions of the Bombay Rent Act;
- b. On 26.02.1997, Suit was decreed ex-parte under Sections 12,

13(1)(c) and 13(1)(k) of the Act;

c. Aggrieved by these decisions, judgment-debtor preferred Civil Appeal No.1024 of 1994. During the pendency of the appeal, parties filed consent terms on 16.10.2009 and the consent decree was passed on 16.10.2001 in pursuance of the consent terms.

d. The suit property is under reservation for HDH as is evident from notification dated 05.01.1987 sanctioning the Development Plan of P.M.C.

16. Mr. Chavan submitted that decree-holders were aware of the fact that the property in dispute is under reservation. He invited my attention to the - (i) copy of the extract of the development plan dated 05.01.1987; (ii) copy of the site plan in respect of the suit property; (iii) recital in the development agreement dated 26.04.2001 entered into by and between petitioner No.1 with M/s. Sai Development Corporation. The recital in the development agreement shows that the property is reserved for the purpose of providing housing for dis-housed (HDH) in the Development Plan prepared for Pune City and the same has been duly notified by the Planning Authority. He, therefore, submitted that it was obligatory on the part of the decree-holders to get the reservation deleted over the suit property and as they did not take steps within two years, the consent decree is frustrated and / or lapsed, and is therefore, become inexecutable.

17. It is not possible to accept this submission. If at all the parties and more particularly, the decree-holders were aware of reservation over the suit property then the consent terms would have been differently worded. Even if I assume in favour of the judgment-debtor that decree-holders were aware of reservation over the suit

property, the question is whether it was within the control or beyond the control of the decree-holders to get reservation deleted over the suit property.

18. Perusal of the record shows that the suit property is under reservation for HDH. On 28.07.2006, City Improvement Committee of P.M.C. passed Resolution No.91 recommending to the General Body to initiate proceedings under Section 37 of the M.R.&T.P. Act. In pursuance thereof, the General Body of P.M.C. passed resolution No.356 on 21.11.2006 for initiating proceedings under Section 37(1) of the M.R.&T.P. Act and inviting objections and suggestions from the public at large. In pursuance thereof, on 07.02.2007, public notice was issued inviting objections and suggestions. On 18.01.2011, the Government sanctioned the proposal submitted by the Corporation under Section 37(2) of the M.R.&T.P. Act and accordingly, the Development Plan was suitably modified incorporating Appendix R-7. Perusal of clause (1) of Appendix R-7 shows that Corporation may develop the reservation after acquiring it in accordance with law or may permit the owner to develop the land subject to the conditions stipulated in clauses (a) to (e) of clause (2). Thus, till such time, the suit property remained under reservation, decree-holders could not have developed the suit property. It is only after the reservation was deleted on 18.01.2011, the decree-holders could submit plans for obtaining sanction of the Planning Authority namely, Corporation.

19. Perusal of clause 6 of the consent terms shows that decree-holders agreed to give judgment-debtor on ownership basis built up area of 1200 sq.ft. located at same specific site, place and location where presently Hotel stands, on payment of construction cost @ Rs.400/- per

sq.ft. It also records that the judgment-debtor had paid the amount of Rs.4,80,000/- in full at the time of the compromise and no further amounts are due from the judgment-debtor to the decree-holders in consideration towards purchase of the Hotel premises. Clause 7 requires decree-holders to ensure that the building plans are sanctioned by the P.M.C. accordingly and no other member of the society or association shall take any objection to the conduct of Hotel business. Clause 8 recorded undertaking of the decree-holders to complete the construction of the hotel premises within a period of 2 years from 16.10.2001, and to immediately handover the vacant and peaceful possession of the constructed premises to the judgment-debtor without demanding any additional payment of any nature whatsoever.

20. Mr. Chavan submitted that decree-holders undertook to complete the construction of the hotel premises within two years from 16.10.2001, which expired on 15.10.2003. During this period, decree-holders did not obtain sanction of the Corporation nor completed construction. decree-holders also did not handover vacant and peaceful possession of the constructed hotel premises to the judgment-debtor. As noted earlier, decree-holders could not have submitted plans to the Corporation for obtaining sanction till such time the suit property was under reservation. Thus, the circumstances were beyond the control of the decree-holders. It is only after the reservation was deleted on 18.01.2011, decree-holders submitted plans, which were duly sanctioned on 30.11.2012.

21. Clause 10 thereof recorded that judgment-debtor will handover vacant and peaceful possession of the suit property together with structure thereof to the decree-holders after sanctioning of the building plans and after the decree-holders actually and physically commence the work of construction of the building on the land. It further provided that

in any case, decree-holders shall hand over the possession of the fully constructed premises to the judgment-debtor within a period of 9 months after such possession of tenanted premises is handed over by her.

22. Perusal of clause 10 shows that judgment-debtor was under obligation to handover vacant and peaceful possession together with structure after the decree-holders obtaining sanction of the building plans. It is only after obtaining the sanction of building plans, decree-holders were to commence the work of construction. decree-holders are expected to handover possession of the fully constructed premises to the judgment-debtor within a period of 9 months after such possession of tenanted premises is handed over by her. Thus, in order to fulfill the obligations cast on the respective parties, it is necessary that property is deleted from reservation and is available for development. At the cost of repetition, the reservation was deleted on 18.01.2011 and thereafter, the Corporation sanctioned the building plans on 30.11.2012. In view thereof, it cannot be said that the decree is rendered inexecutable as it is frustrated. It is also material to note that judgment-debtor continued in possession of the suit premises. In other words, it cannot be said that the decree-holders obtained possession from the judgment-debtor and thereafter they did not comply with the obligations cast on them by the consent decree. Perusal of the notice dated 12.01.2013 issued on behalf of the decree-holders to the judgment-debtor shows that decree-holders specifically referred to sanctioning of plan by the Corporation on 30.11.2012 as also referred to issuance of commencement certificate. This was followed by notice dated 31.01.2013 wherein once again decree-holders made reference to sanctioning of the plan and issuance of the commencement certificate by the Corporation. Despite this, judgment-debtor did not handover possession to the decree-holders. It is only thereafter decree-holders have filed Darkhast on 08.03.2013.

23. Mr. Chavan submitted that the consent decree is not for possession. I do not find any merit in this submission as well. Under the consent decree and in particular clause 10 thereof, judgment-debtor is under obligation to handover possession to the decree-holders together with structures after sanctioning of the building plans and after the decree-holders actually and physically commencing the work of construction of the building.

24. The learned trial Judge rejected the application exhibit-17 made by the judgment-debtor under Section 47 of C.P.C. and allowed application exhibit-6 filed by the decree-holders and ordered issuance of warrant of possession under Order 21, Rule 35 of C.P.C. As against this, the learned District Judge allowed the Civil Revision Applications preferred by the judgment-debtor. In paragraph 13, the learned District Judge noted that the decree-holders were negligent or lax to comply clause 7 of the compromise decree promptly and in the process, filed the execution proceedings after more than 11 years, which can certainly be considered as after thought and only to get possession of the disputed property. The learned District Judge further observed that the executing Court while passing the order below exhibit-17 wrongly came to the conclusion that the circumstance were beyond the control of the landlord. In my opinion, the learned District Judge has failed to consider that the deletion of reservation was not within the control of the decree-holders. For deleting the reservation, the requisite procedure under Section 37 is required to be initiated. That process cannot be initiated at the sweet will of the decree-holders. For that purpose, the P.M.C., being the Planning Authority, has to follow the requisite procedure, and thereafter obtain sanction from the State Government as contemplated by Section 37(2) of the M.R.&T.P. Act. The learned District Judge totally misdirected himself while holding that the

circumstances were not beyond the control of the decree-holders. The learned District Judge further observed that decree-holder has nowhere mentioned that he had really applied for sanctioned plan immediately after compromise decree and that Executing Court ignored the fact that in the compromise decree, it is nowhere mentioned that the possession of the disputed property can be taken by executing the compromise decree. In my opinion, the order passed by the learned District Judge with respect shows non-application of mind. The learned District Judge ignored relevant material while deciding the Revision Applications. The learned District Judge also failed to appreciate that the notices dated 12.01.2013 and 31.01.2013 specifically referred to sanctioning of plans by Corporation on 30.11.2012 and issuance of commencement certificate. It, therefore, has to be held that the impugned order is perverse and suffers from error apparent on the face of record.

25. Mr. Chavan relied upon the decision of the Apex Court in the case of **Bibekanand Bhowal** (*supra*) to contend that judgment-debtor cannot be evicted in execution of the compromise decree. I do not find any merit in this submission. In that case, in paragraph 3, Apex Court referred to the consent decree passed on 10.05.1965 in Title Suit No.41 of 1956. Clause A thereof required defendant-appellant to handover possession of an area of 7' x 7' ft. within one month. It further provided that in the event of non-compliance with the terms contained, defendant-appellant will be liable to ejectment in execution of the decree passed in the Suit in terms of the compromise. Clause C thereof provided that on compliance of the items mentioned in paragraph 1, defendant-appellant shall remain in possession of the room in Suit minus the area mentioned in paragraph 1 as a monthly tenant. Clause I thereof laid down that in the event of any breach of any condition, defendant-appellant will be liable to ejectment by appropriate action in the Court of law. It is in that

context, the Apex Court considered the language employed in various clauses of the consent decree.

26. In paragraph 12, the Apex Court considered clause A of the consent terms and observed that the said clause clearly provided ejection of the defendant-appellant in execution of the compromise decree. In paragraph 13, the Apex Court referred to clauses C and I of the consent terms and observed that “there is a striking difference in the language used in clause A relating to ejectment and in clause I relating to ejectment. Clause A contemplated ejectment of Bhowals in execution of the compromise decree if they did not hand over possession of area of 7' x 7' ft. However, in respect of their tenancy relating to the rest of the building, if they commit any breach of any of the conditions stipulated in the compromise decree, Bhowals were liable to ejectment by appropriate action in a Court of law. In my opinion, facts obtaining in the case before the Apex Court are totally different from the facts of the present case and therefore, the said decision is not applicable.

27. Mr. Chavan also relied upon decision in the case of **Assistant Custodian General of Evacuee Property** (*supra*). In that case, the trial Court passed decree directing the defendant to pay to the plaintiff sum of Rs.11,53,600/0 with interest thereon at 3% per annum to the date of realization on account of mesne profits which have accrued since the institution of the suit **subject to payment of court fee on the entire amount after deducting the court fee already paid**. In paragraph 4, the Apex Court observed that the sum decreed as mesne profits is payable to the decree-holder only if the full amount of court fee is paid by him. The decree itself embodies that stipulation. The obligation on the part of the judgment-debtor to pay the mesne profits accrues only on the satisfaction of that condition. As in that case, the

deficiency in court fee was not paid, it was held that applicant is not entitled to mesne profits under the decree. In my opinion, facts obtaining in that case are not applicable to the facts of the present case as basically the decree is not a conditional decree.

28. In the light of the aforesaid discussion, the impugned order cannot be sustained and as such, is liable to be set aside, and accordingly it is set aside. Civil Revision Applications No.42 of 2014 and 43 of 2014 are dismissed thereby restoring order dated 06.12.2014 below exhibit-6 and dismissing application exhibit-17 made by the judgment-debtor. Rule is made absolute accordingly. In the circumstances of the case, there shall be no order as to costs.

29. At this stage, Mr. Chavan orally applies for stay of this order for a period of 8 weeks from today. He assures that he will not seek further extension. He assures that judgment-debtor and all the adult family members residing / using the suit premises will file usual undertaking with advance copy to the other side on or before 18.11.2016 incorporating therein that,

- (i) that they are in possession of the suit premises and nobody else is in possession;
- (ii) that they have neither created any third party interest nor parted with possession;
- (iii) that they will hereafter neither create third party interest nor part with possession;
- (iv) that they will pay arrears of rent before 18.11.2016 to the petitioner;
- (v) that they will not apply for further extension of time;
- (vi) that in case they are unable to obtain suitable orders from the higher Court within 12 weeks from today, they will vacate and

hand over vacant and peaceful possession of the suit premises to the decree-holders.

30. In view thereof, subject to the judgment-debtor and all adult family members residing / using the suit premises filing undertaking in the aforesaid terms on or before 18.11.2016 by giving advance copy to the other side, this order shall remain stayed for a period of 8 weeks from today. It is made clear that in case arrears upto and inclusive of 8 weeks from today are not paid as also the undertaking in the aforesaid terms is not filed on or before 18.11.2016 , the interim order shall stand vacated without further reference to the Court. Order accordingly.

31. List the Petition for reporting compliance on 23.11.2016.

(R. G. KETKAR, J.)

Minal Parab