

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7998 OF 2015

Smt. Shaikh Ashabi Mehboob
And Ors

...Petitioners

Versus

Shaikh Hamid Shaikh Mohammad
(Deceased) Through LRs.

...Respondents

....

Mr.Rahul S. Kadam, Advocate for the Petitioners.

Mr. Anand Lavate i/b. S.R. Waghmare, Advocate for
Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 21st July, 2016

P.C.

1. Heard Mr. Rahul Kadam, learned Counsel for the petitioners and Mr. Anand Lavate, learned Counsel for the respondents, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 23.6.2014 passed by the learned Adhoc District Judge-3, Pune below Exhibits-5 and 26 in Civil Appeal No.64/2014. By that order, the learned District Judge granted stay to the

eviction decree subject to the condition of the petitioners depositing Rs.1500/- per month as occupation charges in the Court till the decision of the appeal. The petitioners have also restrained from creating any third party interest in the suit premises till the decision of the appeal.

3. In support of this petition, Mr. Kadam strenuously contended that the suit premises admeasures 120 sq. ft. and is situate in the building which is in a ruinous condition. The petitioners are not in a position to deposit Rs.1500/- per month. Petitioner No.1 is a old lady. Petitioner No.3 is a young child. He further submitted that the respondents have not brought on record any material and despite that the learned District Judge has directed the petitioners to deposit Rs.1500/- per month. He, therefore, submitted that the impugned order may be modified. On the other hand Mr.Lavate supported the impugned order.

4. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. In paragraph-4 of the impugned order, the learned District Judge has referred to the decision of the Apex Court in the case of **Atma Ram Properties (P) Ltd. v.**

Fedral Motors Pvt. Ltd. (2005) 1 SCC 705. In paragraphs-5 and 6, the learned District Judge has observed that the suit premises are situate in Nana Peth, which is close to prime commercial locality. Having regard to the site and location of the suit premises, it will be just and proper to direct the petitioners to deposit Rs.1500/- per month from 7.10.2013 till the decision of the appeal. The order passed by the learned District Judge is purely discretionary. For the reasons recorded in paragraphs-5 and 6 of the impugned order, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)