

Mr. V. R. Kasle i/b. Mr. Sachin V. Khandgale for Petitioner.
Mr. Arvind S. Sawant, Respondent No.1 in person and Power of Attorney
Holder of Respondents No.2 and 3.

Heard Mr. Kastle, learned Counsel for petitioner and Mr. Sawant, respondent No.1 in person at length. Respondent No.1 has filed praecipe dated 02.09.2016 enclosing therewith Special Power of Attorney dated 01.09.2016 given by respondents No.2 and 3 authorizing respondent No.1 to appear in this Petition on their behalf as well. Rule. Mr. Sawant waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

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filing of the Suit i.e. 29.11.2008 till date. The learned District Judge made it clear that if the amount is not deposited within one month from the date of the order, the stay shall stand automatically cancelled.

3. Mr. Kasle submits that petitioner is ready and willing to deposit charges @ Rs.5,000/- per month from the date of the decree and not from the date of the filing of the Suit i.e. 29.11.2008. He has relied upon the decision of the Apex Court in the case of ***Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd., (2005) 1 SCC 705***. He further submitted that while decreeing the Suit, the learned trial Judge did not pass decree in terms of prayer clauses (c) and (d). In view thereof, the learned District Judge was not justified in directing deposit @ Rs.5,000/- per month from the date of filing of the Suit. He further states that petitioner has complied order dated 26.08.2016 by depositing amount of compensation @ Rs.5,000/- per month from 01.08.2015 to 30.09.2016.

4. On the other hand, Mr. Sawant supported the impugned order. He submitted that petitioner was inducted as a gratuitous licensee. Notice was issued to him on 09.07.2008 calling upon him to handover possession of the suit premises. As the petitioner did not handover possession despite revocation of his licence, he is in unauthorized possession of the suit premises. The appellate Court was, therefore, justified in granting stay subject to depositing charges @ Rs.5,000/- per month from the date of filing of the Suit.

5. I have considered the rival submissions advanced by the parties. I have also perused the material on record. Perusal of the impugned order shows that the learned District Judge stayed operation of the trial Court's decree subject to deposit of charges @ Rs.5,000/- per month from the

date of filing of the Suit i.e. 29.11.2008. The short controversy is whether the learned District Judge was justified in directing the petitioner to deposit the charges from the date of filing of the Suit, more so when, *prima facie*, at this stage, though respondents have prayed for *mesne* profits from the date of filing of the Suit till handing over possession of the suit premises, the learned trial Judge did not grant that relief. In view thereof, the learned District Judge was not justified in directing the petitioner to deposit charges from the date of filing of the Suit. In view thereof, the impugned order is modified in the following terms:

- a. Application below exhibit-4 filed by the petitioner is allowed and the eviction decree is stayed subject to petitioner depositing charges @ Rs.5,000/- per month from the date of the decree during the pendency of the appeal;
- b. Petitioner shall go on depositing charges @ Rs.5,000/- per month from October 2016 onwards on or before 10th day of the succeeding month/s during the pendency of the Appeal under intimation in writing to the respondents;
- c. The amount deposited in terms of clauses (a) and (b) above shall be invested in any Nationalized Bank, initially for a period of one year and the deposit shall be renewed on yearly basis pending the appeal;
- d. It is made clear that if the petitioner commits two consecutive defaults in depositing the charges from October 2016, the interim order shall stand vacated without further reference to the Court;
- e. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)