

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7444 OF 2016**

Mrs Jaya Sukumar Menon and ..Petitioners.
Ors.

Vs

Ms. Indra Chimanda Kinger and .. Respondents
Ors.

Mr. Pranav Desai a/w Mr. Anupam Dighe a/w Mr. Vishal Jathar i/b
India Law Alliance, Advocates for Petitioners.
Mr. N.D.Jaywant, Advocate for Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 18/07/2016**

PC:

1. Not on Board. At the request of Mr. Desai, taken up in production board. Heard Mr. Pranav Desai, learned counsel for the petitioners and Mr. N.D.Jaywant, learned counsel for the respondents.

2. Rule. Mr. Jaywant waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 14.3.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai below Exh.7 in Appeal No.326 of 2014. By that order, the Appellate Court stayed the execution and operation of the Judgment and decree dated 2.5.2014 passed by

the learned Judge presiding over Court Room no.25 of the Small Causes Court at Mumbai in R.A.E.Suit No.1043/1767 of 2008 subject to the petitioners depositing compensation at the rate of Rs.55,000/- per month for the period from 2.5.2014 upto 31.3.2016 on or before the next date. The petitioners are further directed to deposit monthly interim compensation at the rate of Rs.55000/- per month on or before 15th day of each month till final disposal of the Appeal. It was further made clear that if the petitioners commit breach of any of the conditions, order of stay shall stand vacated automatically. Upon deposit, Office is directed to invest amount of compensation, if deposited, in nationalized Bank in fixed deposit initially for a period of one year and thereafter for similar period till disposal of the Appeal. The petitioners are directed not to part with possession as also not to create third party interest during the pendency of the Appeal.

4. Petition was heard on 1.7.2016 and after hearing both sides, it was adjourned to 29.7.2016. In the meantime, the petitioners were directed to deposit 50% of arrears of compensation at the rate of Rs.55,000/- per month for the period from May, 2014 upto March, 2016 in the trial Court under intimation in writing to the respondents' Advocate. The petitioners were further directed to deposit balance 50% amount

within 4 weeks from the date of the order in the trial Court towards arrears of compensation at the rate of Rs.55000/- per month from May 2014 to 31.3.16 under intimation in writing to the respondents' Advocate. It was made clear that the said deposits shall be without prejudice to rights and contentions of the petitioners. In the meantime, ad-interim order in terms of prayer clause (ii) was granted. It was further made clear that in case the petitioners do not deposit 50% amount within two weeks and balance 50% amount within four weeks from the date of the order, the ad-interim order shall stand vacate without further reference to the Court.

5. Mr. Desai states that the petitioners are present in the Court. He has tendered photocopy of their Aadhar Card and Pan Card which are taken on record and marked 'X' collectively for identification. Upon taking instructions from the petitioners, he states that the petitioners are in possession and nobody else is in possession. The petitioners have neither created third party interest nor parted with possession and that they will hereafter neither create third party interest nor part with possession and they will hand over vacant and peaceful possession of the suit premises to the respondents on or before 31.8.2016. He further assures that within two weeks from today, the petitioners and all adult family members using the suit premises will file usual

undertaking in this Court, after giving advance copy to other side, incorporating therein:

(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 interests nor part with possession;

(iv) that they will hand over vacant and peaceful possession of the suit premises to the respondents on or before 31.8.2016.

6. He submits that as the petitioners are not in a position to comply the interim order while granting stay, they are handing over possession of the suit premises to the respondents which may be made subject to outcome of the Appeal. The respondents may also be restrained from creating third party interest in any manner whatsoever.

7. Mr. Jaywant states that respondent no.2 is present in the Court. He has tendered photocopy of his identity card which is taken on record and marked "Y" for identification. Upon taking instructions, he states that if possession is handed over to the respondents, they will not create third party interest as also they will not part with possession. He further states that issue of payment of Rs.55000/- per month from May 2014 till 31st August

2016 may be kept open to be agitated at the time of final hearing of the Appeal.

8. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

(1) The petitioners shall hand over vacant and peaceful possession of the suit premises to the respondents on or before 31.8.2016.

(2) Upon receipt of possession, the respondents shall neither create third party interest nor part with possession and will abide by the outcome of the appeal. Respondents shall file undertaking to that effect within two weeks from today.

(3) While deciding the Appeal, the Appellate Court will also decide the question of payment of compensation at the rate of Rs.55000/- per month from May 2014 till the petitioners handing over possession to the respondents on or before 31.8.2016.

(4) Impugned orders are modified in the aforesaid terms. Rule is made absolute in the aforesaid terms with no order as to costs.

(5) List the Petition for reporting compliance after three weeks.

(R.G.Ketkar, J.)