

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 4427 OF 2016
IN
FIRST APPEAL NO. 1522 OF 2016**

Mr. Shivshankar Channuseth Soni	...	Applicant/ Appellant
Versus		
Mr. Kalikaprasad Mahadeo Soni	...	Respondent

Mr. K. K. Pandey for Applicant/Appellant.
Mr. O. S. Kutty for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH OCTOBER, 2016.

P.C. :

- 1] Not on board. Upon mentioning taken on board.
- 2] Heard the learned counsel for the parties.
- 3] This is an application seeking stay to the execution of the possession decree passed by the City Civil Court, Mumbai on 4th August, 2016 in Suit No. 6929 of 2003.
- 4] It is submitted that the trial Court has at the time of passing the decree granted the stay to the execution, thereof, for a period of three months and those three months will be expiring on 4th November, 2016.

5] In view thereof, it is submitted that the stay be granted to the execution of the possession decree, otherwise the appeal itself may be become infructuous.

6] Respondent-Decree Holder has resisted this application by filing affidavit-in-reply and submitted that the appellant is in possession of the suit premises right from February-2002 i.e. more than 14 years have passed. Since, then the suit being of the year 2003, it is urged that at the time, the appellant was paying an amount of Rs.2,000/- per month as royalty. Now, considering the market rate and the fact that the suit premises are used for commercial purpose, appellant may be directed to pay an amount of Rs.10,000/- per month towards royalty during the pendency of the appeal, as the hearing of the appeal may take many more years to go and during this period the respondent-decree holder should not be deprived from the fruits of the decree.

7] The law is very well settled on this aspect and hence, considering the fact that the appellant is in possession of the commercial premises, wherein he is running the sugar cane juice center, in my considered opinion it would be just and reasonable, if the appellant is directed to pay Rs.6,000/- per month towards royalty

of the suit premises from the date of filing of the appeal till further orders or till decision of the appeal, whichever may be earlier.

8] Accordingly, this application for stay is allowed subject to condition that appellant continues to pay an amount of Rs.6,000/- per month from the date of the appeal till the decision of the appeal or further orders, whichever may be earlier.

9] On failure of the appellant to pay the said amount, the stay will stand automatically vacated without further reference to this Court.

(DR.SHALINI PHANSALKAR-JOSHI, J.)