

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2632 OF 2016
IN
WRIT PETITION NO.12689 OF 2015**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. R.M. Haridas a/w. Ms. Phiroza Irani, Advocate for the Applicants.
Mr. Agnel Carneiro i/b. M/s. Mulla & Mulla & Craigie Blunt & Caroe, for Respondents No.8 & 9.

CORAM : R. G. KETKAR, J.

DATE : 10/10/2016

P.C.:

1. Not on board. At the request of Mr. Haridas, taken up in production board for orders.
2. Heard Mr. Haridas, learned Counsel for the applicants and Mr. Carneiro, learned Counsel for respondents No.2, 8 & 9, at length.
3. By this application, the applicants, respondents No.1 & 2 in the petition, have prayed for modification of the order dated 21.9.2016 passed by this Court. Mr. Haridas invited my attention to paragraph-6 of the order and submitted that respondent No.2 Trust herein is permitted to withdraw the amount so deposited by respondent No.1 herein @ Rs.886/- per month towards the

monthly compensation / royalty. He submitted that respondent No.2 did not file any application for withdrawal of the amount to be deposited by respondent No.1. The direction permitting respondent No.2 to withdraw the amount unconditionally may be recalled. He further invited my attention to the additional issue framed by the learned trial Judge on 29.9.2016 in R.A.D. Suit No.825/2009 which requires respondents No.1 & 2 who are the plaintiffs therein to prove that respondent No.1 who is defendant No.8 is put in possession of the suit premises after death of deceased tenant. He submitted that direction given in paragraph-6 may cause prejudice to the applicants herein. Lastly, he submitted that having regard to the short controversy raised in the petition, petition may be heard by giving peremptory date for final hearing.

4. On the other hand learned Counsel for the respondents submitted that no case is made out for modification of the order passed in Writ Petition.

5. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. There is a dispute between the applicants on one hand and respondent No.1 on the other as regards suit premises. On one hand, the applicants are claiming to be tenant and submit that respondent

No.2 Trust have also accepted them as tenants. On the other, respondent No.1 also claims right in the suit premises. It is also not in dispute that the suit premises is allotted by respondent No.2 Trust. In other words, respondent No.2 is the landlord of the suit premises is not a fact in dispute.

6. In view thereof, no case is made out for recalling the direction in paragraph-6 permitting respondent No.2 Trust to withdraw the amount unconditionally.

7. As far as other contention advanced by Mr. Haridas is concerned that the order passed on 21.9.2016 in the above petition may influence the Courts seized of the matter is concerned, this can be taken care of by adding one sentence in paragraph-6 to the effect that '***This arrangement is made without prejudice to the rights and contentions of the parties.***' Order dated 21.9.2016 is modified to aforesaid extent only. Rest of the order shall remain as it is.

8. Subject to this, no case is made out for modification of order dated 21.9.2016. Liberty is reserved to the applicants to apply for fixing date of hearing after Diwali Vacation. Civil Application is disposed of. Order accordingly.

(R. G. KETKAR, J.)