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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.695 OF 2016

IN

SECOND APPEAL NO.419 OF 2015

Yaswhant Shankar Nazare through C.A.
Surendra Yashwant Nazare ..Applicant.

IN THE MATTER OF

Smt. Dattatraya Mahadeo Pandharkame ..Appellant.
V/s.
Yaswhant Shankar Nazare ..Respondent.

Mr.D.B.Sawant for the appellant.

Mr.Akshay Petkar for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : DECEMBER 4, 2017

PC.:-

The application is moved by the landlord in whose favour there is a decree of eviction. Pursuant to the appeal filed by the appellant-tenant, the respondent-landlord claims that the appellant-tenant be put to condition of depositing Rs.25,000/- per month towards compensation by incorporating conditions for the stay enjoyed by the appellant.

2. Learned counsel for the appellant-non applicant states that the appellant shall deposit an amount of Rs.7,500/- per month in the trial Court considering the fact that the tenancy is since 1983 and the premises are put to commercial use.

3. Considered the submission. The appeal came to be admitted based on the substantial question of law as to whether the judgment in the earlier suit is to the detriment of the respondent-landlord.

4. The premises are admittedly used for commercial purpose on the monthly rent of Rs.150/-.

5. Considering the fact that the premises are used for commercial purpose in view of the law laid down by the Apex Court in the case of ¹*Atma Ram Properties (P) Ltd. V/s. Federal Motors (P) Ltd.*, the provisions of Order 41 Rule 5 of the Civil Procedure Code, it would be appropriate, in my opinion, to allow the application and direct the appellant / non applicant to deposit an amount of Rs.10,000/- on the tenth day of each English calendar month in the trial Court. Two subsequent defaults on the part of the appellant / non applicant in depositing the amount will lead to vacating the interim order passed by

¹ 2005(1) SC 705

this Court.

6. Needless to say that the respondent-landlord will be entitled to withdraw the said amount upon submitting an undertaking to this Court that in case the appeal is allowed, the amount will be returned to the appellant-tenant with interest at the rate of 8% within a period of three months from that date. The amount towards the arrears from January, 2015 to be deposited within a period of 8 weeks from today. It is clarified that the amount of compensation at the rate of Rs.10,000/- would be continued to be deposited as hereinabove.

7. The civil application stands disposed of accordingly.

(NITIN W.SAMBRE, J.)