

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12124 OF 2017**

Ahura Engineering Co & Ors	...Petitioners
<i>Versus</i>	
VF Lobo (deceased) & Ors	...Respondents

Mr Javed Akhtar Khan, *for the Petitioner in both Petitions.*

CORAM: G.S. PATEL, J
DATED: 14th November 2017

PC:-

1. Leave to amend the Petition forthwith to correct the prayers without need of reverification.

2. Heard. The Writ Petition is directed against an order dated 6th May 2017 of the Appellate Bench of the Court of Small Causes Court, Mumbai. By this order on an application by the original Defendant for stay, the Appellate Court made an order for deposit of an interim compensation at Rs.25,000/- per month from the date of the Trial Court judgment and decree, 5th April 2016, with arrears payable by 10th June 2017 and thereafter monthly compensation at the same rate. The Appellate Court relied on the decisions of the Supreme Court in *Atma Ram Properties (P) Ltd v M/s Federal Motors Pvt Ltd*¹ and *State of*

1 2005 (1) SCC 705.

*Maharashtra & Anr v Super Max International Pvt Ltd & Ors.*² As the Appeal Court correctly observed, there is no requirement that in fixing monthly compensation it is only the market compensation that should be fixed. A Court must exercise restraint. It must not fix an excessive, fanciful or punitive amount. Having regard to not only the location of the premises but the fact they are commercial, the Appellate Court exercised its discretion. The submission of the Petitioners is that the compensation is far too low. This in itself is not a ground to interfere. Ultimately the Appellate Court has exercised its discretion and has done so in a cautious manner. To invite this Court's interference, it must be showed that the order is perverse or suffers from some material irregularity. Finding none, I have no hesitation in rejecting the Writ Petition. No costs.

(G. S. PATEL, J.)

² 2009 (9) SCC 772.