

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2155 OF 2017
IN
FIRST APPEAL st. NO.21142 OF 2017

Smt.Surekha Sadanand Shetty & anr. ... Applicants

Vs.

Smt.Sushila Doddy Shetty ... Respondent

Mr.P.J. Thorat for the Applicants
Mr.V.S.Kapse i/b P.S. Tiwari for Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **DECEMBER 5, 2017**

P.C.:

1. The applicant No.1 is the daughter of the respondent and applicant No.2 is the son-in-law of the respondent. The respondent had filed Suit No.1252 of 2013 against the appellant for possession of the suit room at Jariwala Chawl No.1, Arthur Road, Tardeo, Mumbai. The suit is decreed by judgment and order dated 6.7.2017. At the time of passing the judgment, the learned Judge of the trial Court has directed the defendants to pay Rs.2,000/- per month as *mesne* profit from the date of the order.

2. The challenge given to the said judgment and order in the appeal is on the ground of jurisdiction that the appellants were residing there as a gratuitous licensees, as per the case of the plaintiff herself. As per the case of the appellants, they are the protected tenants as the tenancy of the suit premises was transferred by the original tenant in the name of the appellant No.1. The challenge to the impugned order is also given on the ground that *mesne* profit is not prayed for at all.

3. Learned Counsel for the respondent submits that the suit premises was not transferred and the landlord, who was examined as a witness for the appellants, has given admission in the cross-examination that after the death of the original tenant Shri Doddya Shetty, the tenancy continued and both the mother and the daughter are the joint tenants. Thus, he prays that as the suit is decreed, the appellants should pay compensation to the respondent.

4. In view of the submissions of the learned Counsel and considering the relationship between the parties, I hereby direct the appellants to pay Rs.2,000/- to the respondent as compensation from the date of the judgment and decree and all the arrears shall be paid within a period of six weeks from today. Further, the monthly

compensation of Rs.2,000/- shall be paid on or before 10th of every month. Subject to above, the operation and implementation and execution of the impugned judgment and decree is stayed, pending appeal. It is made clear that in the event of any two consecutive defaults, the stay granted will be vacated.

5. Civil Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)