

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

WRIT PETITION NO.8868 OF 2014

Shri. Bhanudas Rambhau More & Ors. Petitioners

Vs.

Smt. Savita w/o Macchindra More Respondents
& Ors.

Mr. Anilkumar K. Patil for the Petitioners.
Mr. Shriram S. Kulkarni for Respondent no.1.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 13th November, 2017

P.C.:

1 Heard respective Counsel. Rule. Rule made returnable forthwith with the consent of the parties.

2 The petitioners herein happens to be the original defendants in Regular Civil Suit No. 177 of 2010. The plaintiff, who happens to be the widow of the brother of the petitioner had filed the suit for partition and possession. The plaintiff had also prayed for maintenance during the pendency of the suit. The learned Civil Judge, Junior Division, Yeola vide order dated 11th October, 2011 had

directed the defendants to pay an amount of Rs.500/- as interim maintenance to each of the plaintiff i.e. the plaintiff and her two children. The total amount that was to be paid per month was Rs.1500/-. It is pertinent to note that the said order dated 11th October, 2011 was not challenged by the petitioner at any stage and therefore the said order had attained finality. The suit was decreed by the judgment and order dated 19th November, 2013. The learned Civil Judge, Junior Division while drawing the decree had directed the present petitioner to pay an amount of maintenance regularly. It was presumed that the petitioner has abided by the interim orders.

3 Being aggrieved by the said judgment and decree, the present petitioner had filed Regular Civil Appeal No. 152 of 2013 in the District Court at Niphad. The appellant in the said appeal had also prayed for staying the decree during the pendency of the appeal. The application in appeal was filed below Exhibit 5. The learned District Judge, Niphad, by an order dated 18th July, 2014 had partly allowed the application and had stayed the decree to the

extent of delivery of possession of the suit property only subject to deposit of maintenance amount granted by the trial Court within a period of one month from the date of the order. The learned District Judge had also directed to deposit an amount of Rs.60,000/- per annum on or before 30th November of each year in the Court towards tentative mesne profit till disposal of the appeal. Hence, this writ petition challenging the order dated 18th July, 2014.

4 This Court, by an order dated 1st October, 2014 had issued notice to the respondents and has stayed the terms and conditions mentioned in the operative part of the said order. The interim relief was granted. The directions of the District Judge directing the petitioners to deposit an amount of Rs.60,000/- per annum. The learned counsel for the respondents submits that the total arrears from 11th October, 2011 is approximately Rs.1,08,000/-. It is obvious that the said amount is not mesne profit as the suit was for partition and possession. The profit of the defendant could not have been calculated. Moreover, the interim order was not

challenged. Learned counsel for the petitioner has rightly and vehemently submitted that there is no basis for calculation of Rs.60,000/- per annum. The said land is an agricultural land, that the defendant had not paid interest amount of profit although it is submitted by the learned counsel for the respondent that the said land is an agricultural land and it is an irrigated land. In view of this in the interest of justice, the interest of the original plaintiff who happens to be the widow of the brother of the defendant i.e. the defendant needs to be protected. Hence, it is directed that the petitioner shall deposit an amount of Rs.50,000/- by 30th December, 2017. The rest of the amount Rs.25,000/- to be paid by 30th January, 2018 and the remaining amount of Rs.25,000/- to be paid by 30th March, 2018 towards arrears of the order dated 11th October, 2011. While calculating Rs.1,08,000/-, set off to be given to the maintenance, which is already paid at random, however till the conclusion of the appeal, the defendant shall pay Rs.18,000/- annually. The learned appellate Court is hereby directed to expedite the hearing of the appeal and shall conclude the hearing of the

appeal by 30th April, 2018 subject to the condition that the arrears of maintenance are paid as directed by this court. Rule is discharged in the above terms. Petition stands disposed of.

(Smt. Sadhana S. Jadhav, J)