

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

WRIT PETITION NO.11290 OF 2017

Indumathi Madhukar Mane & Anr. ..Petitioners

V/s.

Shri.Gadge Maharaj Maratha
Dharmasala Trust Pandharpur
Through its Trustees

1.Shri.Baban Gangadhar Kolse Patil & Ors. ..Respondents

Mr.Rahul Kate h/f Mr.Makrand A. Utagikar for the Petitioners.

Mr.Prabhakar M. Jadhav for Respondent Nos.1 to 3.

Mr.S.D. Rayrikar, AGP for Respondent-State.

CORAM : M. S. SONAK, J.

DATE : 09th OCTOBER 2017

P.C.

1. Not on board. Upon production, taken on board.
2. Heard learned counsel for the parties.
3. Rule. At the request and with the consent of the learned counsel for the parties, Rule is made returnable forthwith.
4. In this case, the Appeal Court, has declined the stay to

the eviction decree pending consideration of petitioners application for condonation of delay of 4 years, 6 months and 21 days in instituting the Appeal against the eviction decree dated 16.08.2012.

5. Mr.Rahul Kate, the learned counsel for the petitioners on the basis of the instructions, from the petitioners states that the compensation at the rate of Rs.750/- per month will be deposited before the Appeal Court with effect from 01.09.2012 till date, which comes to approximately Rs.46,500/- within a period of four weeks from today. There is dispute between the parties as to whether the reasonable compensation in respect of the suit premises is Rs.400/- per month as contended by the petitioner or whether it is Rs.1,500/- per month as contended by the respondents. Pending determination of the same, compensation is assessed at Rs.750/- per month.

6. For the period of four weeks from today, the eviction decree not to be executed. If amount of Rs.46,500/- is indeed deposited before the Appeal Court within a period of four weeks from today, the eviction decree not to be executed until the Appeal Court takes some decision and decide the petitioners application seeking condonation of delay. If the application of condonation of delay is dismissed, naturally, the stay on execution of the decree

shall stand vacated. If the delay is condoned, the Appeal Court, to consider the continuance of the stay and at the same time determine the reasonable compensation in terms of the decisions of the Hon'ble Supreme Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹ and *State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors.*²

7. It is made clear that this Court has not gone into the issue of sufficient cause and therefore, the application for condonation of delay to be considered on its own merits and in accordance with law.

8. The Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9. The learned Appeal Court is directed to dispose of the application for condonation of delay within a period of 12 weeks from the date of deposit of the compensation amount.

10 The respondent is further granted liberty to apply to the

¹ (2005) 1 SCC 705

² 2009 (5) ALL MR 1001

Appeal Court for withdrawal of the amount. Such application, if made be considered on its own merits and in accordance with law after the disposal of the application for condonation of delay.

11. The petition is disposed of accordingly.

(M. S. SONAK, J.)