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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.4894 OF 2018

Hindurao Thorat & Anr. .... Petitioners
V/s.
Vijay Daulatsing Madan .... Respondent

Mr. Nikhil Wadikar, i/by Mr. Nandu V. Pawar, for the Petitioners.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND MAY, 2018.

P.C. :

1. Heard Mr. Wadikar, learned counsel for the Petitioners.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 13th October 2017 passed by District Judge-14, Pune, thereby granting stay to the execution and operation of the 'Judgment and Decree' passed in Special Civil Suit No.2348 of 2011, only to the extent of possession, subject to the Petitioners depositing in the Court the amount of Rs.15,000/- per month as compensation for use and occupation of the suit flat from the date of the stay application i.e. 23rd June 2017 till the decision of the Appeal.

3. The Petitioners have challenged the said order by preferring Review Application No.21 of 2017; however, the said Review Application came to be rejected by the Appellate Court on the ground that, it was filed beyond limitation.

4. The submission of learned counsel for the Petitioners is that, the Petitioners' financial position is not sound to pay this much amount of compensation. Secondly, it is submitted that, if the suit flat is allotted to the Petitioners as 'gratuitous licensee' and the Respondent has also not claimed any mesne profit or the rent therefor, then, the order passed by the Appellate Court of imposing the condition of deposit of Rs.15,000/- per month as compensation is onerous and Petitioners are unable to comply therewith.

5. It can be seen from the order passed by the Appellate Court that, as per the description of the suit flat, it is situate in Building No.6 at 24, Bund Garden Road, Pune, in Guruprasad Co-operative Housing Society. Therefore, needless to state that, the suit flat is situate in a posh locality, where even the prevailing rent must be far above the amount of Rs.15,000/- per month, as directed by the Appellate Court.

6. In view of the Judgment of the Hon'ble Supreme Court in the case

of *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., 2005 (3) Bom.C.R. 274*, if the Petitioners want to continue in possession of the suit premises, then they have to pay the compensation and the amount of compensation awarded by the Appellate Court cannot be called in any way as exorbitant, so as to warrant interference therein.

7. Hence, the Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]