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

WRIT PETITION NO.4857 OF 2017

Smt. Lata Yashwantraya Shegaon
and ors

... Petitioners

V/s.

Srimantraya Bhimraya
Shegaon and ors

... Respondents

Mr. Satyajeet A. Rajeshirke, for the
Petitioners.

Mr. Shrishail Sakhare, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the petitioners and
respondents.

2] Rule.

3] Rule is made returnable forthwith with the consent of
parties and the petition is taken up for final hearing at admission
stage.

4] By this petition filed under Article 227 of the Constitution

of India, the petitioners are challenging the order dated 4th March, 2017, passed by District Judge-3, Solapur below Exh.5, in Regular Civil Appeal No.252 of 2016.

5] Application at Ex.5 was filed by the respondent-appellant, seeking stay to the execution of the decree dated 7.10.2016, passed in Special Civil Suit No.237 of 2011. The said suit was filed by the petitioners for partition and separate possession of their shares in the joint family property. Respondent No.1 is petitioner No.1's brother-in-law. During pendency of the suit, petitioners have filed application for interim maintenance and the said application was allowed by the trial Court, vide its order dated 11.1.2012. directing thereby respondent No.1 to pay an amount of Rs.15,000/- per month as interim maintenance to the petitioner No.1 and to her children from the date of filing application till final decision of the main petition.

6] The petitioners have thereafter filed Special Darkhast No.43 of 2015, for recovery of amount of interim maintenance, as respondent No.1 avoided and neglected to pay the same. Respondent No.1, then challenged the order passed below Exh.11 in the said Special Darkhast No.43 of 2015, by which Jangam warrant was issued, by filing Civil Revision Application No.207 of 2016 in this

Court. This Court has rejected the said Revision Application vide order dated 06.04.2016, holding that an amount of Rs.7,20,625/- was due from respondent No.1 towards arrears of maintenance.

7] Meanwhile the suit filed by the petitioners came to be decreed on 07.10.2016 and as per judgment and decree, respondent. No.1 was directed that he shall pay maintenance at the rate of Rs.15,000/- per month to the present petitioners w.e.f. 15.6.2011 till satisfaction of the decree and it was further directed that the charge in respect of maintenance be kept upon the suit property. The trial Court, by its judgment and order specifically clarified that the proceeding of Special Darkhast No.43 of 2015 would continue against respondent No.1.

8] Then, respondent No.1 has preferred Civil Appeal against the said judgment and decree and in the said appeal, filed application at Exh.5 seeking stay to the execution of the said judgment and decree. The Appellate Court, allowed the said application. The Appellate Court in paragraph No.9 of its, order accepted the fact that respondent No.1 herein has avoided to pay an amount of interim maintenance and hence it would not be proper to do so. It was also observed that an amount of Rs.8,40,000/- was due from respondent

towards interim maintenance for the period of 56 months. However, the Appellate Court, only on consideration that respondent No.1 has deposited an amount of interim maintenance of Rs.1,00,000/-, granted stay to the execution of order of interim maintenance, subject to condition that respondent No.1 to deposit an amount of Rs.40,000/- in the Court before the next date and to furnish the bank guarantee for the remaining amount of Rs.7 lacs.

9] The only reason given by the Appellate Court for passing such order is that there is also an order of mesne profit. Hence, this order of interim maintenance will create further complications. It is needless to state that while passing such order, the appellate Court has totally frustrated the very object of order granting interim maintenance. The interim maintenance was granted towards livelihood of the petitioner No.1 who is already suffering from AIDS and her two minor children. The said order was not obeyed by respondent No.1. As a result an amount of Rs.8,40,000/- was due from him. On deposit of meager amount of Rs.1,00,000/- and thereafter Rs.40,000/- the Appellate Court has granted the stay to the recovery of remaining amount of Rs.7,0,000/-. While doing so, the Appellate Court has not even considered that the deposit of the amount in the Court is not going to help the petitioners for their

livelihood. As it was meant for their day-to-day maintenance, it should have been paid to them. It was not meant to be deposited in the Court.

10] Assuming that the petitioners are ultimately held not entitled to get mesne profits, even then, whatever amount is paid by respondent No.1 towards interim maintenance is bound to be adjusted in the amount of mesne profits. Granting stay to the order of interim maintenance, which the trial Court, in its wisdom has specifically mentioned in its final order also, was clearly not legal, valid or proper. The Appellate Court has committed grave error in granting stay to the said order and thereby deprived the petitioners from getting their dues, which was the amount of interim maintenance for their day to day livelihood.

11] The impugned order, therefore, passed by the Appellate Court granting stay to the recovery of the maintenance and the arrears thereof being against the provisions of law, equity and propriety, it has to be set aside.

12] Accordingly writ petition is allowed.

13] The impugned order passed by the Appellate Court granting stay to the execution of the recovery of maintenance as awarded by the trial Court stands vacated.

14] Only if respondent No.1 pays entire amount of arrears of maintenance, to the petitioners, bank guarantee furnished earlier would stand discharged.

15] The amount of Rs.1,40,000/- deposited in the trial Court, be paid to to the petitioners forthwith.

16] Rule made absolute in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]