

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.7273 OF 2018

|                        |     |            |
|------------------------|-----|------------|
| Veena Madanlal Gambhir | ... | Petitioner |
| Vs.                    |     |            |
| Jayantilal Haria       | ... | Respondent |

Mr. Y. K. Tiwari i/b. K. P. Tiwari & Co. for Petitioner.  
Mr. S. T. Manek for Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : JULY 24, 2018**

**P.C. :**

Heard Mr.Tiwari, learned Counsel for the petitioner and Mr.Manek, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner (appellant before the Appellate Court), hereinafter referred to as 'plaintiff', has challenged the order dated 23.04.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai below exhibits-10 and 14 in (A1) Appeal No.228 of 2017. By that order, the Appellate Court rejected application exhibit-10 filed by the plaintiff restraining the respondent / defendant from executing or giving effect to the judgment and decree dated 17.02.2017 passed by the learned trial Judge in respect of room No.9, Gambhir Niwas (Krishna Building No.2), Gokhle Society Lane, Parel, Mumbai 400 012 (for short 'suit premises'). The Appellate Court allowed application exhibit-14 filed for restoration of possession of the suit premises and for compensation. The plaintiff has also challenged order dated 24.04.2018 below exhibit-19 by which the Appellate Court rejected the application for stay of the order dated 23.04.2018.

3. Rule. Mr. Manek waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. The matter was heard at length on 23.07.2018 and was adjourned till today for passing order so as to enable Mr. Manek to take instructions from the respondent-defendant. Mr. Manek submits that Ankur Hirji Gala, son-in-law of the respondent and his Constituted Attorney is present in the Court. He has tendered photocopy of the PAN Card of Ankur Hirji Gala as also the Power of Attorney executed by the respondent in his favour. The same is taken on record and marked 'A colly.' for identification. He has also tendered photocopy of passport of the respondent, which is taken on record and marked 'B' for identification. Mr. Manek submitted that respondent is undergoing treatment and is therefore not present in the Court.

5. Upon taking instructions from the Constituted Attorney of the respondent, Mr. Manek agrees for setting aside the impugned order dated 23.04.2018 and for restoration of applications exhibits-10 and 14 for deciding it afresh in the light of clause 2(g) of the order dated 01.10.2015 passed by this Court in C.R.A.No.466 of 2015. He submits that the petitioner-plaintiff may be directed to pay Rs.10,000/- per month to the respondent from the date of passing of the decree i.e. 17.02.2017 till such time the applications exhibits 10 and 14 are decided by the Appellate Court afresh.

6. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

- a. The order dated 23.04.2018 passed by the Appellate Court below exhibits-10 and 14 is set aside;

- b. Applications exhibits-10 and 14 are restored to the file of the Appellate Court for deciding it afresh in the light of clause 2(g) of the order dated 01.10.2015 passed by this Court in C.R.A.No.466 of 2015;
- c. Petitioner shall pay Rs.10,000/- per month to the respondent from 17.02.2017 till such time the applications exhibits-10 and 14 are decided afresh by the Appellate Court. The amount shall be paid within four weeks from today;
- d. The amount already deposited by the petitioner shall be invested in a Nationalized Bank and while disposing of the Appeal finally, the Appellate Court will pass appropriate order in relation to the amount so deposited along with the accrued interest;
- e. All contentions of the parties are expressly kept open;
- f. Liberty is reserved to the parties to apply for expeditious disposal of the Appeal. If such application is made, the Appellate Court will pass appropriate orders.

7. Rule is made absolute in the aforesaid terms with no order as to costs. Order accordingly.

**(R. G. KETKAR, J.)**

Minal  
Sandip  
Parab

Digitally signed  
by Minal  
Sandip Parab  
Date:  
2018.07.25  
05:17:36 +0400

*Minal Parab*