

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

WRIT PETITION NO.7257 OF 2017

Smt. Mayurika Gajendra Parekh & Anr. ...Petitioner

Vs.

Shri. Premendra Mohan Diwanchand Trikha... Respondent

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Ms. Sheetal Pandya a/w. Avani Rathod I/b M/s. Solicis Lex for the
Petitioner.

Mr. Awadhesh Pandey for the Respondent.

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**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 29, 2018.**

P.C. :

1. Heard learned counsel for the parties.
2. Challenge in the petition is to the order dated 4th May 2017 passed by the Small Causes Court at Mumbai, whereby application below Exhibit No.8 for stay of the judgment and decree in R.A.E. & R. Suit NO.209/271 of 2011 has been conditionally allowed in the following terms:

“i) The appellant shall deposit monthly compensation of Rs.5,000/- (Rupees Five Thousand Only) in respect of the suit premises from the date of decree i.e., from 30.06.2015 upto 31.05.2017 till 30.06.2017.

ii) The appellants shall continue to deposit in the Court the compensation in respect of the suit premises at the rate of Rs.5,000/- p.m. (Rupees Five Thousand Only) w.e.f.

01.06.2017 onwards till disposal of appeal on or before 10th day of each succeeding month.

iii) Addl. Registrar, Small Causes Court, Bandra Branch is directed to invest the amount of compensation as and when deposited by the appellants in the fixed deposit for the term of at least one year in the Nationalized Bank.

vi) If the appellant failed to comply with the order, the stay granted by this Court shall automatically stand vacated.”

3. The grievance of the petitioner is that the monthly compensation amount of Rs.5000/-, as fixed by the appellate court to be paid from the date of the decree i.e. from 30.06.2015 upto 31.05.2017 till 30.06.2017 is on a higher side. The suit premises are admeasuring 180 sq. ft. The appellate court proceeded to fix the monthly compensation amount of Rs.5000/- per month on the basis of prevailing market rate and on the basis of the ready reckoner rate. The main grievance is in regard to the observation as made by the appellate court in para 9 of the impugned order.

4. After this petition was heard for some time, learned counsel for the respondent on instruction of his client is agreeable for the amount of monthly compensation to be reduced from Rs.5000/- per month to Rs.2000/- per month.

5. Considering the facts and circumstances of the case, the approach of the respondent-landlord is quite reasonable. The impugned order therefore is required to be modified, in view of the

consensus as arrived between the parties as also in the interest of justice and considering the facts of the case. Accordingly, the impugned order dated 4.5.2017 stands modified to the extent that the amount of Rs.5000/- as referred in para 2(i) and (ii) shall be read as Rs.2000/- in place of Rs.5000/- per month.

6. The petition is accordingly disposed of in the above terms. No costs.

7. At this stage learned counsel for the respondent submits that the appeal be expedited. It will not be possible for this court to pass any such order, it would however be open to the parties, if there is an appropriate cause to request the court for an out of turn or early hearing by moving an appropriate application, before the appellate court to expedite the hearing of the appeal. If such application is moved, it be decided by the appellate court on its own merits.

8. The arrears of the compensation be deposited by the petitioner within a period of three months from today with no further extension to be sought.

(G.S. KULKARNI, J.)