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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO.3618 OF 2019***

|                                              |                |
|----------------------------------------------|----------------|
| Anuradha Narayan Natu & Anr.                 | ..Petitioners. |
| V/s.                                         |                |
| Maharashtra State Road Transport Corporation | ..Respondent.  |

Mr.Yuvraj P.Narvankar for the petitioners.

Mr.Yashodeep P.Deshmukh for respondent No.1.

***CORAM : M.S.SONAK, J.***

***DATE : MARCH 26, 2019***

**ORAL JUDGMENT**

Heard Mr.Narvankar, learned counsel for the petitioners and Mr.Deshmukh, learned counsel for the respondents.

2. Mr.Narvankar, learned counsel for the petitioner seeks leave to delete respondent N0o.2 since she is impleaded only as a formal party. Leave as prayed is granted. Amendment to be carried out forthwith.

3. Rule. Rule is made returnable forthwith by consent and at the request of of learned counsel for the parties.

4. Challenge is to the order dated February 26, 2019 by which

learned Appeal Court has directed to deposit the entire arrears of rent for availing the benefit of stay against the eviction from the suit premises. The operative part of the impugned order dated February 26, 2019 read thus :-

- “1. Application Exhibit 7 and 9 are allowed as follows:*
- 2. Operation, implementation and execution of order passed by Residential Deputy Collector, Kolhapur in Eviction Case No. 1274/2017 mentioned as Misc. Appln. No.3/2017 dated 7-12-2018 is hereby stayed subject to depositing arrears of rent by the appellants, as directed in the order dated 7-12-2018 passed by the Residential Deputy Collector, Kolhapur in Eviction Case No.1274/2017 mentioned as Misc. Appln. No.3/2017 within one month, in the Court.*
- 3. The appelland respondents are not entitled to withdraw the amount, if deposited by appellants in the Court, till final decision of this appeal.*
- 4. Depositing amount as directed in clause No.(2) of this order is condition precedent, failing which the stay granted by this order shall stand vacated automatically.*
- 5. Copy of this order be kept with Exh.9 for record purpose.”*

5. From the record, it appears that the payments demanded are on the basis of request for reduction of compensation from the year 1981. The amount comes to over Rs.58 lakhs or thereabout, including interest at the rate of 12% p.a.

6. In November, 2017 when the respondent instituted application for eviction, the compensation amount demanded was Rs.31,000/- per month. Mr.Narvankar points out that the initial agreed rent was Rs.1,427/ per month was regularly paid by the petitioners. He submits that there was no written communication referred in increase of compensation amount. He submits that if the petitioners are required to deposit so much amount, the petitioners will not be in a position to do so and will have to suffer eviction even before their appeal is heard on merits.

7. Mr.Deshmukh, learned counsel for respondent No.1 points out that the suit premises is situated at Solapur Central bus stand. He points out that by now the market rate is Rs.35,000/- per month. He points out that the petitioner has a huge rented premises by paying throwaway compensation for all these years. He points out that there is no formal licence agreement with the petitioners. For all these reasons, he submits that there is absolutely no error in the impugned order or any directions imposed in the impugned orders.

8. Taking into consideration the circumstances of the case, it would be harsh at this stage to require the petitioners to deposit the amount of over Rs.58 lakhs as a pre-condition for stay. No doubt, the Appeal Court is entitled to put the conditions for granting interim relief. However, the conditions should not be so onerous as to render the

valuable right of appeal, infructuous. Accordingly, in the peculiar facts of the present, the petition is disposed of by following order :-

- a) The impugned order dated February 26, 2019 passed in Regular Civil Appeal No.19/2019 passed by the District Judge-5, Kolhapur is modified and the petitioners are directed to deposit Rs.7.5 lakhs before the Appeal Court within a period of six weeks from today, as one of the conditions for stay of the eviction order;
- b) Further, with effect from March 1, 2019 onwards, the petitioners will pay, without prejudice, compensation of Rs.30,000/- to the respondent-Corporation;
- c) Such compensation will have to be paid / deposited on or before fifth day of each succeeding English calendar month. The first of such payment / deposit will have to be made on April 5, 2019;
- d) The respondent-Corporation will have the liberty to withdraw the amount of Rs7.5 lakhs, if and when deposited by the petitioners. Such withdrawal shall however to abide by the final order that will have made in the appeal;
- e) Even the payment of Rs.30,000/- per month as aforesaid shall have to abide with the final order that will be made in the appeal;
- f) The stay shall operate subject to compliance of the aforesaid conditions in substitution of the conditions in the impugned order

dated February 26, 2019;

- g) However, if the amount of Rs.7.5 lakhs is not deposited within a period of six weeks from today, this petition shall be deemed to have been dismissed without further reference to this Court. It means that the stay granted by order dated February 26, 2019 shall vacated;
- h) In case of any two consecutive defaults in payment of monthly compensation amount of Rs.30,000/- the stay order shall stand vacated without any further reference to this Court or the Appeal Court;
- i) The Appeal Court is directed to dispose of the appeal as expeditiously as possible and in any case within a period of six months from today;
- j) There shall be no order as to costs.

9. All concerned to act on the basis of an authenticated copy of this order.

10. It is made clear that this Court this Court has not gone into the merits of the matter and, therefore, the observations in this order need not influence the Appeal Court while deciding the appeal on its own merits and in accordance with law.

**(M.S.SONAK, J.)**