

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.5456 OF 2019

Haroon H. M. Nathani	]	
(since deceased) through legal heirs	]	
Jamila Haroon Nathani and others.	]	Petitioners
Vs.		
Mohammadali Abdulla Sabuwala	]	
and others.	]	Respondents

.....
Mr. R.M. Haridas, Advocate for the Petitioners.

.....
CORAM : R.G. KETKAR, J.

DATE : 25th APRIL, 2019.

P.C.

Not on board. At the request of Mr. Haridas, taken up in the production board.

2. Heard Mr. Haridas, learned Counsel for the petitioner.

3. This Petition takes exception to the order dated 14th March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai below Exhibit 8 in (A-1) Appeal No.156 of 2015. By that order, the Appellate Court allowed application Exhibit 8 filed by the petitioners, hereinafter referred to as 'defendants' under Order-XLI, Rule-5 of the Code of Civil Procedure, 1908 (for short 'C.P.C') and stayed eviction decree dated 5th February, 2015 passed by the learned trial Judge in R.A.E. & R. Suit No.1076/3084 of 1989 subject to defendants depositing compensation @ Rs.35,000/- per month in respect of the suit premises from the date of the decree i.e from 5th February, 2015 till 31st March, 2019 in three equal installments; first falling on 1st April, 2019,

second installment falling on 2nd May, 2019 and last installment falling on 1st June, 2019. The defendants are further directed to deposit compensation @ Rs.35,000/- per month from 1st April, 2019 onwards till disposal of the appeal on or before 10th day of each succeeding month. The Registrar is directed to deposit amount of compensation deposited by the defendants in Fixed Deposit in any Nationalized Bank for a period of one year and the same shall be renewed yearly, if so required.

4. Mr. Haridas seeks permission to withdraw the Petition with liberty to take out appropriate application in the aforesaid terms in the Small Causes Court at Mumbai.

5. Mr. Haridas states that on or before 30th April, 2019, the petitioners will deposit Rs.5,60,000/- representing first installment in the Small Causes Court at Mumbai. The petitioners will take out appropriate application for condonation of delay in depositing the first installment on or before 30th April, 2019 as also seeking more installments for depositing the arrears or for extension of time for depositing the amount of the second and third installment.

6. On the motion made by Mr. Haridas, Petition is allowed to be withdrawn with liberty as prayed for and as such is disposed of. Grant of liberty shall not be construed as an expression on the merits of the case. All contentions of the parties on merits are expressly kept open. The Small Causes Court, Mumbai shall accept the first installment.

7. All the parties, including the Small Causes Court at Mumbai to act upon authenticated copy of this order.

[R.G. KETKAR, J.]