

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

**CIVIL APPLICATION NO.2168 OF 2019
IN
FIRST APPEAL NO.1123 OF 2019**

Mumtaz Hamed Amin & Ors. .. Applicants/Appellants
Vs.
Kamaluddin Fazluddin Khot .. Respondent

Mr.Drupad Patil i/by Mr.Rahul Soman, Mr.A.P. Shirke and Mr.S.D.
Gadgil for the applicants.
Mr.Sandip Ghogare for the respondent.

CORAM : R.D.DHANUKA, J.
DATE : 24th February 2020

P.C.:

. By a separate order dated 23th July 2019 passed by this Court, First Appeal has been admitted.

2. By this application, the applicants (original appellants) seek stay of the judgment and order dated 30th April 2019 passed by the Bombay City Civil Court inter alia declaring that the suit property i.e. plot no.674, Town Planning Scheme, Mumbai City III, Wanzawadi, Mahim, Mumbai is the joint property of the plaintiff and defendant nos.1 to 7. The plaintiff has ½ and the defendant nos.1 to 7 have ½ undivided share in the suit property. It is however, the case of the defendant nos.1 to 7 (appellants herein) that they are entitled to the suit property exclusively and not entitled to only ½ share. Both the parties have submitted their valuation reports in support of the rival contentions

for suggesting enhancement of the compensation to be paid during the pendency of the First Appeal.

3. Matter was heard at length. I have considered the valuation reports submitted by both the parties. It is not in dispute that the appellants are in physical possession of the suit property today which are the spinsters.

4. Learned counsel for the respondent (original plaintiff) initially suggested compensation @Rs.45,000/- per month. He now seeks to increase the said amount.

5. Learned counsel for the appellants have agreed to pay @Rs.40,000/- per month as and by way of compensation/mense profit during the pendency of the First Appeal and also to clear arrears of compensation at the same rate from the date of decree during pendency of the First Appeal. I am inclined to accept the submission made by Mr.Patil, learned counsel for the appellants.

6. Learned counsel for the appellants, on instructions, undertakes that his client would pay the arrears of compensation/mense profit from the date of decree till date in six equal installments payable on 10th day of each month in this Court. Undertaking is accepted.

7. Learned counsel further undertakes that for the month of March 2020 till the First Appeal is disposed of, his client would continue to deposit @Rs.40,000/- per month on 10th day of each month. He further undertakes that all outgoings of the Municipal Corporation would be exclusively borne by his client during the pendency of the First Appeal.

8. It is made clear that this order is without prejudice to the rights and contentions of both the parties. Amount that would be deposited by the appellants shall be invested by the Registrar of this Court in a fixed deposit of a nationalized bank initially for a period of five years and thereafter for like period depending upon the pendency of the First Appeal.

9. Civil application is made absolute in terms of prayer clause (a) subject to aforesaid conditions. It is made clear that if any default is made by the appellants in depositing the amount of arrears and future compensation/mense profit, interim stay granted by this Court to stand vacated. Parties as well as the Registrar of this Court to act on the authenticated copy of this order.

R.D.DHANUKA, J.