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

WRIT PETITION NO.11261 OF 2018

Kaluram Vishwanath Chinchwade and Anr. ... Petitioners

Versus

Vishwanath Mahadev Kate and Ors. ...Respondents

Mr. G. S. Godbole i/b Ms. V. L. Maindad, for the Petitioners.

Mr. S. T. Kulkarni, for the Respondent Nos.1 to 3.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JANUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioners have impugned the order dated 6th September, 2018, passed by the learned District Judge – 15, Pune, below Exhibit – 10 in Civil Appeal No. 685 of 2017.
3. Perused the papers. It appears that the petitioners (original plaintiffs) had filed Special Civil Suit No.820 of 1994 (subsequently numbered as Regular Civil Suit No.35 of 2012), for specific performance of an Agreement to sell dated 17th July, 1993. The Respondents

(Defendants) also filed a counter-claim for possession of their premises. It is not in dispute that in 2009, the petitioners (original plaintiffs) withdrew their suit, by filing pursis. After evidence was led in the counter-claim, the learned Civil Judge, Junior Division, Pimpri, partly decreed the said counter-claim of the respondents (defendants). The operative part of the said Judgment and Order passed in counter-claim in R.C.S. No.35 of 2012, reads thus:-

“ORDER

- 1). The counter claim is partly decreed.
- 2). Plaintiffs (defendants in counter claim) to deliver the vacant possession of the suit property i.e. mentioned in Para No.1 of the plaint to defendants (plaintiffs in counter claim), within period of two months from the date of this order.
- 3). Plaintiffs (defendants in counter claim) are directed to pay damages to defendants (plaintiffs in counter-claim) Rs.6500/- per month from 01.07.1993 till realization of suit.
- 4). Both the parties shall bear their own costs.
- 5). Decree be drawn up accordingly.”

4. Being aggrieved by the said order, the petitioners have filed an Appeal in the District Court, Pune being Civil Appeal No.685 of 2017. In

the said Appeal, the petitioners filed an application under Order 41 Rule 5 of the Code of Civil Procedure for stay of the Execution Petition No.1 of 2018 till the final disposal of their appeal. The learned District Judge was pleased to allow the said application and accordingly the Execution Application No.1 of 2018 was stayed till the final disposal of the appeal on the condition, that the petitioners deposit damages at the rate of Rs.6,500/- per month X 302 months, within four weeks, from the date of the order. Clause – 3 of the impugned order further directs the petitioners to continue depositing damages at the rate of Rs.6,500/- per month on the 10th day of each succeeding month , till the final disposal of the appeal.

5. It appears that the petitioners had deposited Rs.18,33,000/- in the suit filed by them in the Court of the learned Civil Judge, Junior Division. Learned Counsel for the Petitioners states that the petitioners without prejudice to their rights and contentions have no objection if the said principal amount deposited by them alongwith accrued interest thereon is adjusted towards damages, in the event the appeal is decided against the petitioners. Learned Counsel further on instructions of the petitioners, who are present in Court states that the petitioners without prejudice to their rights and contentions are ready to deposit damages at the rate of Rs.6,500/- per month from 6th September, 2018 till date, within four weeks

from today. Statement accepted. He further on instructions states that the petitioners will continue to deposit the said amount as directed vide clause – 3 of the impugned order by the learned District Judge, every month, till the petitioners’ appeal, being Civil Appeal No. 685 of 2017 is finally decided by the learned District Judge. Statement accepted.

6. At this stage, learned counsel for the Respondent Nos.1 to 3 states that the Respondent No.1 is more than 70 years of age and prays that the hearing of the Appeal be expedited.

7. In the peculiar facts of this case, since the Appeal is of the year 2017, the hearing of the Appeal is expedited. The learned District Judge to decide the aforesaid Appeal i.e. Civil Appeal No.685 of 2017, as expeditiously as possible and in any event within four months from the date of receipt of this order. All parties to co-operate in the expeditious disposal of the Appeal.

8. In view of what is stated aforesaid, in particular para 5, the execution of the decree is stayed, till the Appeal is finally disposed of. In the meantime, neither the petitioners nor the respondents shall create any third party interest in the suit property.

9. Petition is accordingly disposed of on the aforesaid terms.
10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.