

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

WRIT PETITION NO. 9384 OF 2022

Shakil Ismail Dongari

...Petitioner

Versus

Vidhyadhar Kesharchand Doshi Since

Dec Thr Legal Heirs & Ors

...Respondents

Mr. Prasad B Kulkarni for the petitioner.

Mr. Mandar Soman for the respondents

CORAM : NITIN W. SAMBRE, J.

DATED : 3rd AUGUST, 2022

P.C.:

1. The order impugned is passed below Exhibit 41 in R.D No. 223 of 2016 whereby a possession warrant was directed to be issued on 14/07/2022.
2. The present petitioner/defendant suffered decree for eviction on 20/11/2014. Feeling aggrieved, in RCA No. 300 of 2014, the petitioner was put to condition of deposit of accommodation charges of Rs.5,000/- per month from the date of decree i.e. 20/11/2014.
3. It appears that the appeal of the petitioner/judgment debtor came to be dismissed in default in the year 2016 which has laid to the petitioner filing of application for condonation of delay and

restoration.

4. The submissions of the counsel for the petitioner/judgment debtor are, till the such application viz. for condonation of delay and restoration of appeal is decided, the petitioner needs to be protected as in view of the impugned order the petitioner is likely to loose his possession.

5. He would urge that the statute provides for the remedy of appeal viz. of course the petitioner has every right to exhaust. According to him, great prejudice will be caused in case protection is not ordered as the Appeal is not decided on merits.

6. Learned counsel for the respondents would oppose the prayer on the ground that the amount of compensation is not deposited for about last more than 7 years.

7. I have considered the aforesaid submissions.

8. The fact remains that the petitioner vide order dated 22/04/2015 was directed by District Judge to deposit the amount of Rs.5,000/- per month on or before the 10/06/2015 of every month. The said order is not complied with till this date as the petitioner has neither paid the rent nor the amount of compensation.

9. Apart from above, the appeal of the petitioner was dismissed

for want of prosecution in the year 2016 as such on 17/01/2022 a possession warrant was directed to be issued. The said order was not taken to its logical end in view of impediments created by the petitioner.

10. On one hand the petitioner is neither paying rent nor the compensation for last more than 7 year and on other hand he intends to enjoy the property free of costs.

11. In case if the appeal of the petitioner is restored and allowed on merits, petitioner of course will be entitled for the restoration of the possession.

12. In the aforesaid background no case for interference is made out. The Petition as such fails, stands dismissed.

(NITIN W. SAMBRE, J.)