

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

WRIT PETITION NO.8082 OF 2022

Smt. Usha Padmanabhan Nair & Anr.

... Petitioners

Vs.

Mathuradas Morarji & Ors.

... Respondents

Mr.Dharam Jumanani with Mr. Kunal Mehta, Mr. Mihir Nerurkar, Mr. Mani Thevar i/by Ganesh & Company for the Petitioners.

Mr. Shravan M. Vyas for Respondents No. 2 and 3.

CORAM: ABHAY AHUJA J.

DATE : 21ST JULY 2022

P.C.:

1. This matter was heard on 19th July, 2022 and is again listed today. After the matter has been heard for some time, Mr. Jumanani, learned counsel for the Petitioners and Mr. Vyas, learned counsel for Respondents No. 2 and 3 agree that if directions are issued by this Court with respect to the issue of date from which the compensation is to be paid that should suffice and the proceedings pending before the Small Causes Court at Mumbai can move ahead.

2. Mr. Jumanani, draws the attention of this Court to a decision dated 28th January, 2013 in Writ Petition No. 7154 of 2012 passed

by this Court in case of *T. Abdul Rehman Vs. Bhagwandas Ramdas and Ors.*, where this Court while applying the law laid down by the Apex Court in the case of *Atmaram Properties Private Limited Vs. Federal Motors Private Limited (2005 (1) SCC 705)*, has observed that the stay of an appeal should not be unconditional but the stay should be on such terms as would make it possible for the persons who have let out properties and succeeded in the suits and obtained decrees for possession to get reasonable return or compensation. It is observed that pendency of appeals should not be utilized to continue and perpetuate the illegal stay unconditionally. Learned counsel submits that this Court, therefore, granted compensation from the date of the application for stay instead of the date of decree and urges that the same course of action be adopted here as well. Mr. Vyas, learned counsel for Respondents No. 2 and 3 accepts the legal position in this regard.

3. Having heard the learned counsel and having considered the above discussion, in the light of the decision of this Court in *Abdul Rehman Vs. Bhagwandas Ramdas and Ors., (supra)*, I am of the view that the interests of justice would be served if the orders dated 17th March, 2020 (order below Exh. 8) and 6th June, 2022 (order below

Exh.15) are modified to read from the date of the stay application instead of from the date of decree. Petitioners are directed to deposit the compensation by 25th July, 2022.

4. With the above directions, Petition stands disposed.

(ABHAY AHUJA, J.)

Digitally
signed by
NIKITA
YOGESH
GADGIL
Date:
2022.07.21
19:05:15
+0530