

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

WRIT PETITION NO.13777 OF 2018

Salmabai Yusufali Dahodwalla	..Petitioner
Versus	
Manavi Pravin Thakkar	..Respondent

Mr. Jaydeep Deo, for the Petitioner.
Ms. Pooja Pandey i/by Anand Pandey, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 12th AUGUST, 2022

PC.

1. The order impugned is passed below Exh.7 in Appeal No.44 of 2013, which is arising out the decree passed in RAE Suit No.1113/1728 of 2005 delivered on 30th March, 2013.

2. The decree dated 30th March, 2013 was passed at the behest of respondent/plaintiff thereby the present petitioner/defendant was directed to deliver the suit premises along with garage to the respondent/plaintiff within two months from the date of passing of the decree. The Appeal No.44 of 2013 is arising out of the aforesaid decree.

3. In the appeal, the petitioner has taken out application Exh.7 seeking stay to the execution of the judgment and decree

dated 30th March, 2013. The said application came to be allowed vide order impugned dated 31st August, 2018. Vide said order the petitioner is put to condition of deposit of Rs.1,63,000/- per month towards compensation, so also the arrears of compensation within three months. The petitioner is further directed to continue to deposit said amount of compensation.

4. The order to the extent of directions to deposit arrears, the present and further compensation is subject matter of challenge. Mr. Jaydeep Deo, counsel appearing for the petitioner/judgment-debtor would urge that the order granting stay subject to aforesaid unreasonable condition is not sustainable in law, as the petitioner cannot be put to unreasonable conditions of deposit of exorbitant compensation of Rs.1,63,000/- per month and towards arrears from the date of the application. According to him, the petitioner has good case on merit and there is every likelihood that he will succeed in the matter and that being so, the appeal itself can be heard on merit. Apart from above his contentions are, the petitioner is financially incapacitated to deposit hefty amount of compensation including the arrears.

5. Prayer is opposed by the counsel for the respondent on the ground that the petitioner is in possession of area 3582 sq.ft. consists of five bedrooms, hall, kitchen, bathrooms, toilets and attached servant's room in South Mumbai next to Oval maidan. According to counsel for the respondent, amount of compensation

awarded by the Appellate Court subject to which the stay is granted is so unreasonable and respondent is seeking enhancement of the same.

6. I have appreciated the aforesaid submissions.

7. The suit against the petitioner/defendant was decreed vide judgment and decree dated 30th March, 2013. The respondent/plaintiff is contesting his claim for the aforesaid property since last more than 17 years. Eviction of the petitioner is ordered on the ground of non-user and causing waste and damage to the suit property.

8. The fact remains that the average rent in the locality where the petitioner is occupying the property is around Rs.100/- per sq.ft.

9. Apart from above, the Court is required to be sensitive to the fact that petitioner is in possession of the flat admeasuring 3582 sq.ft. consists of five bedrooms, hall, kitchen, bathrooms, toilets and servant's room.

10. As such, in any case, it cannot be said that the amount of compensation ordered to be deposited i.e. Rs.1,63,000/- is unreasonable or at much higher side.

11. The petitioner suffered a decree way back on 30th March, 2013 and I am informed that has not cleared aforesaid amount of compensation/arrears since last about four years.

12. In the aforesaid background, it cannot be said that the petitioner is put to unreasonable condition. As such, no case for interference in extraordinary jurisdiction is made out

13. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]