

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5002 OF 2022

Shiv s/o Harikisan Agrawal

vs.

Kalpana wd/o Renukadas Rajurkar and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. R. Deshpande, Advocate and Mr. Zeeshan Haq,
Advocate for petitioner.
Mr. Masood Shareef, Advocate for respondent Nos.1 & 2.

CORAM : MANISH PITALE J.

DATE : 28/09/2022

By this writ petition, the petitioner i.e. original tenant has challenged order dated 04/08/2022 passed by the appellate Court, whereby during pendency of the appeal filed by the petitioner against the decree passed by the Small Causes Court, interim stay was granted subject to the petitioner depositing an amount of Rs.26,000/- per month towards mesne profits and compensation for use and occupation of the suit premises from the date of the judgment and decree of the Small Causes Court.

2. On 19/08/2022, this Court passed the following order :-

“ Heard Mr. Deshpande, learned counsel for the petitioner.

2] *The petition challenges the order dated 04.08.2022, whereby the application under Order 41 Rule 5 of CPC filed by the present petitioner/original tenant has been allowed subject to the petitioner depositing in the court a sum of ₹.26,000/- per month towards compensation for use and occupation of the suit premises from the date of the judgment and decree.*

3] *It is submitted that no material has been considered before passing the impugned order which according to Mr. Deshpande, learned counsel for the petitioner is apparent from perusal of para 12 of the impugned order.*

4] *Issue notice for final disposal, returnable on 5.9.2022.*

5] *Petitioner to serve the respondents by all modes permissible.*

Hamdast granted.

6] *Subject to the condition of deposit of 60% of the entire arrears at the rate directed by the impugned order, within a period of 10 days from today, there shall be a stay to the impugned order till the returnable date. ”*

3. It is not in dispute that the amount of Rs.3,74,400/- was deposited in this Court in

pursuance of the direction given by order dated 19/08/2022.

4. When the petition is called out for hearing, the learned counsel for the petitioner submitted that this Court may consider continuing the interim order passed by this Court by directing the petitioner to deposit /pay amount of Rs.15,600/- per month which comes to about 60% of Rs.26,000/- per month as directed by the appellate Court and further direction may be granted for disposing of the appeal in accordance with law.

5. Although the learned counsel for the respondents does not have specific instructions to agree to the proposal made by the petitioner, this Court is of the opinion that in the interest of justice, the contention of the petitioner deserves to be accepted, with a further direction for expeditiously disposing of the pending appeal.

6. In view of the above, the Writ Petition is disposed of by allowing the same partly and modifying the impugned order passed by the appellate Court.

7. Accordingly, it is directed that from September, 2022, the petitioner shall pay an amount of Rs.15,600/- to the respondents for occupation of the suit premises during the pendency of the appeal.

8. Subject to such regular monthly payment by the petitioner to the respondents, the interim stay as granted by the appellate Court shall continue to operate.

9. The appellate Court is directed to expeditiously disposed of pending appeal and in any case within a period of **six months** from today.

10. The amount of arrears deposited in this Court by the petitioner shall be disbursed to the respondent No.2 forthwith.

11. Writ Petition stands disposed of.

JUDGE