

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

22 WRIT PETITION NO.2037 OF 2023

**SUSHILA RAMESH NAGAL
VERSUS
SUREKHA DEEPAK HIWALE AND ANOTHER**

...
Advocate for Petitioner : Mr. R.C. Bora h/f Mr.Ade Ravindra B.
AGP for Respondent No. 2-State : Mr. R.B.Bagul
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 22.02.2023.

PER COURT :

1. Heard.

2. By this petition, the challenge is to the order dated 06.12.2022 passed by the executing Court in RD No. 8 of 2022 on the application of the Petitioner/Decree holder seeking issuance of possession warrant. Petitioner is the original plaintiff, had instituted suit bearing Rent Suit No. 01 of 2015 for eviction and possession of the suit property, which came to be decreed on 22.09.2021. The decree was put into execution by the petitioner. In the mean time, the respondent preferred an appeal before the Appellate Court, in which the order of stay was passed by the Ad-hoc District Judge -4, Aurangabad by order dated 22.11.2022 in Rent Appeal No. 3 of 2021. The Appellate Court while staying the effect and execution of the judgment and decree passed in Rent Suit No. 1 of 2025 held that the

stay will come into effect only after depositing the entire arrears of amount of rent and in the event the respondent failed to pay the future monthly rent then the stay will stand vacated automatically. It is the contention of the petitioner that there was non compliance of the order of stay granted by the appellate Court in as much as neither the arrears of the rent was paid nor monthly rent being deposited and as such the application for possession warrant came to be filed by the petitioner.

3. Perused the impugned order dated 06.12.2022. The executing Court has observed that the Judgment Debtor has put on record the amount of arrears of rent and the mode through which the payment was made. It also observed that although it is the contention of the Decree Holder that there is non compliance of the order of stay granted by the appellate Court, there is no material brought on record as regards the details of arrears of rent and other amounts which are pending, After considering the material on record, the application for issuance of possession warrant came to be dismissed.

4. For the purpose of showing the non compliance, the minimum requirement was to provide the details of arrears of rent and other amounts which are pending. The Petitioner has made bare averments that there is non compliance and sought possession warrant. As stay

was granted subject to conditions, there has to be sufficient material on record to demonstrate non compliance, which is lacking in the present case. Considering that the executing Court has rejected the application by taking into consideration the material which has been produced on record, in my opinion, there is no infirmity in the impugned order.

5. The learned counsel for the petitioner has not been able to demonstrate the non compliance of the order of stay and perversity in the findings of the executing Court. Learned counsel for the petitioner fairly conceded that no material was produced on record to show that there was non compliance of the order of stay granted by the appellate Court.

6. In the light of the above, there is no merit in the petition. Petition stands dismissed.

7. Needless to state that the petitioners are at liberty to file appropriate application before the executing Court, which may be considered by the executing Court on its own merits and in accordance with the law.

(SHARMILA U. DESHMUKH)
JUDGE

mahajansb/