

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4138 OF 2022**

Hemant Nagardas Gandhi

....Petitioner

Versus

Gangadhar S. Shetty and anr.

....Respondents

Mr. Prashant Pandey with Mr. Ashish Jain and Mr. Dipsy Sequeira
i/b. M/s. W3Legal LLP, Advocates for the Petitioner.

Mr. Vishal Kanade with Mr. A. R. Shaikh i/b. ASD Associates,
Advocates for the Respondent Nos. 1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH 2023.

P.C. :

1. Heard learned counsel for the petitioner and learned counsel for the respondent Nos. 1 and 2.

2. Learned counsel for the petitioner submits that the Appellate Court of Small Causes Court, by order dated 4th December 2021, partly allowed the application filed by respondents below Exhibit 9. In the said order, the Appellate Court had directed respondent No.1(original defendant No.1) to pay to the petitioner (herein) an amount of Rs.51,50,000/- as per decree

towards arrears of compensation amount from December 2002 to December 2005 along with simple interest @ 9% per annum within 14 days from the date of passing of the order. Thereafter respondents filed review application before the same Court. By order dated 18th December 2021, the appellate bench stayed the said order in respect of clause -2 (c) passed in order below Exhibit - 9. By order dated 18th April, 2022, the said review application is dismissed by Appellate Bench. Respondents have not complied with the order passed by the Appellate Bench below Exhibit "9". Hence, requested to pass appropriate orders.

3. Learned counsel for respondents submits that respondents are in financial difficulty, therefore they could not deposit the amount directed by the Appellate Bench of Small Causes Court within stipulated time. They had filed an application for extension of time to deposit the amount. Extension was granted but the respondents could not comply the order fully. Hence appropriate orders be passed.

4. I have heard both learned counsel, perused the order passed below Exhibit "9". By this order, the Appellate Bench of Small Causes Court had partly allowed the application. The order

passed by the Appellate Bench is conditional order. By the said order, the Appellate Bench had directed respondent to deposit compensation of suit premises @ Rs.1,50,000/- per month before 10th day of each succeeding month and deposit the amount of Rs.51,50,000/- towards arrears of compensation within fourteen days from the date of passing of the order. The Appellate Bench, in clause (e) of the operative order, has mentioned that if the appellant failed to comply with the order as directed, then, stay granted by this order automatically stands vacated. So the order passed by the Appellate Bench is clear. As the respondents have not deposited the amount directed by the Appellate Bench, automatically the stay order passed by the Appellate Court is vacated. It is not necessary to set-aside the said order as challenged by the petitioner in this writ petition.

5. In view of above, the writ petition stands disposed of.

(SHIVKUMAR DIGE, J.)