



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13104 OF 2023

Kamal Pasha Zaidi

... Petitioner

Versus

Indramani S. Mishra

... Respondent

.....

Mr. Abhinav Chandrachud i/by Mr.Shaikh Asif Abdul Rehman, Mr.Pranay Jain, for the Petitioner.

Mr. S.R.Dubey, for the Respondent.

.....

CORAM : SHARMILA U. DESHMUKH, J.

DATE : October 23, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 31st July, 2023 passed by the Appellate Court under the provisions of Order 41 Rule 5 of the Code of Civil Procedure, 1908, granting stay to the eviction decree on payment of interim compensation at the rate of Rs.7500/- p.m.

3. Without going into the merits of the case, in view of the consensus which has been arrived at between the parties, the matter be remanded to the Appellate Court to decide the issue afresh by taking into consideration the decision of this Court in Writ Petition No.394 of 2017 dated 8th September, 2017, which will be placed on record before the Appellate Court by the Petitioner.

4. Needless to clarify that while considering the application afresh, the Appellate Court will not only consider the decision of this Court as stated aforesaid but will also consider the matter in light of the decisions of the Apex Court in *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.*, reported in *(2005) 1 SCC 705* and in *State of Maharashtra and Another vs. Super Max International (P) Ltd.* reported in *(2009) 9 SCC 772*, as also the paying capacity of the tenants. Both parties will be at liberty to circulate the necessary authorities in support of their respective contentions. The Appellate Court to decide the application being Exh.6 within a period of four weeks from the date of production of this order before the Appellate Court.

5. In view of the consensus above, the impugned order dated 31st July, 2023 is hereby quashed and set aside. Writ Petition stands disposed of in the above terms.

(Sharmila U. Deshmukh, J.)