

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

WRIT PETITION NO.1833 OF 2023

Smt. Manjulaben Wd/o Mansukhlal Shah

Since deceased through legal heirs

Mrs. Swati Jayant Shah & Anr.

..Petitioners

Versus

Shri. Dharmesh T. Parekh & Ors.

..Respondents

Mr. Sagar Gala i/by Rajesh P. Chheda, for the Petitioners.

Ms. Ami Chandan, for Respondent Nos.1 & 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 21st DECEMBER, 2023

PC.

1. Heard.

2. The challenge in the Petition is to the order dated 12th September, 2022 passed by the Appellate Court in exercise of powers under Order XLI Rule 5 of the CPC directing monthly compensation of Rs.25,000/- per month to be paid as condition of stay of decree of eviction.

3. Learned counsel for the Petitioners submits that Appellate Court has not taken into consideration the relevant parameters while deciding the amount of impugned compensation. He submits that comparable instance which was produced by the

Respondents was in respect of the premises admeasuring about 425 sq.ft. with mezzanine floor located in area which was road facing, whereas suit premises is located in a building which has been constructed almost 100 years back and the premises is situated in the rear portion of the building. He submits that the Appellate Court although held that the instance are not comparable has relied upon the instance produced by the Respondents and directed a sum of Rs.25,000/- as monthly compensation.

4. Per contra, learned counsel appearing for the Respondents submits that the decree for eviction is on the ground of subletting and the parties are not using that premises. She would further submit that Appellate Court has rightly granted the compensation of Rs.25,000/- considering that the Petitioners themselves had submitted that the compensation shall not be more than 17,617/-

5. Considered the submissions and perused the record.

6. While exercising the power under Order XLI Rule 5 of the CPC the Appellate Court has discretion to grant stay subject to such terms as the Appellate Court may deem fit. In the present case, in the light of the decision of the Apex Court in the case of ***Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.*** reported in ***2005(1) SCC 705***, the Appellate Court has taken into consideration the location of the building which is situated in highly commercial

area of Mumbai i.e. Kalbadevi. The Appellate Court considered that the premises is situated in the hub of the commercial activity and as such, granted compensation at Rs.25,000/- per month. The Appellate Court while doing so has taken into consideration the admission of the Petitioners that the compensation as per the ready reckoner rate is in the sum of Rs.17,617/-. The submission of the Petitioners that the comparable instance produced by the Respondents has been taken into consideration by the Appellate Court cannot be accepted, as Appellate Court has itself considered that the premises of instance produced has a mezzanine floor and in the present case same is not the case. Although the Respondents have produced documents for claiming compensation calculated @ Rs.45,000/- per month which is registered Leave and Licence agreement, same has been appropriately reduced by the Appellate Court and has arrived at a figure of Rs.25,000/-. There is no material demonstrated to warrant interference of this Court in the discretion exercised by the Appellate Court.

7. The Petition is devoid of merits and stands dismissed.

[SHARMILA U. DESHMUKH, J.]