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

**905 CIVIL APPLICATION NO. 1974 OF 2024
IN SA/151/2013**

**SHYAMSUNDAR NAGNATHRAO SIDHANIT L.RS. KARUNA
SHMSUNDAER SIDHANT**

....Applicant

VERSUS

**BHASKARRAO NAGNATHRAO SIDHANTI L.RS. SANJAY
BHASKARRAO AND OTHERS**

.....Respondents

Mr. A. S. Deshmukh, Advocate for the applicant
Mr. S. S. Gangakhedkar, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 19th JULY, 2024

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1. Heard the learned counsel for the parties.
2. By way of this application the applicant seeks modification of the order dated 02-09-2015 passed by this court directing the respondents to deposit Rs.3000/- per month in the office of this court till the appeal is disposed off. This amount is directed towards compensation as there is decree passed against

respondent directing him to hand over the possession of the house property.

3. It is the contention of the applicant that this amount was directed in 2015, considering the rate prevailing at that time. Now by passage of time, there is increase in the value of the property. If the property is given on rent, it would now at least fetch Rs.20,000/- per month as the property is situated in the city of Ahmedpur and consist of 8 to 10 years.

4. Learned advocate for the respondent vehemently opposes the application by filing the affidavit-in-reply on record. He submits that the applicant has suppressed the fact that she is receiving the pension as her husband was in government service. He further submits that this court by considering the facts has rightly directed to pay Rs.3,000/- which is sufficient even now and prays for dismissal.

5. Learned advocate for the applicant in support of his

submission has relied upon the judgment in the case of M/s. Atmaram Properties Pvt. Ltd. Vs M/s. Federal Motors Pvt. Ltd. reported in AIR Online 2004 SC 597, wherein the Hon'ble Apex court had directed to pay the Landlord amount of compensation per month towards occupation of the suit premises by the tenant and there was decree of possession.

6. Learned advocate for the respondents submits that this judgment is not applicable to the present facts. Said judgment is delivered in the proceedings wherein the dispute was between Landlord and tenant whereas present dispute arises out of joint family property.

7. After considering the said judgment this court finds that it is not material as to what kind of dispute is there between the parties. The judgment is delivered on principle that a person who obtained stay is enjoying possession in spite of judgment and order against him by virtue of stay granted by the Superior Court, this court thus finds that the said principle is applicable

even in this case, as there is concurrent decree against respondents/claimants in the appeal.

8. Coming to the point of determination of the amount of compensation, it is well accepted fact that prices of the property is always go on increasing. So it is the case about income from the property. The amount which would have been fetched in 2015 would certainly be moved in 2024. It is almost double in 9 to 10 years. This court therefore, taking in view of this, it would be appropriate to increase the said amount from Rs.3,000/- to Rs.6,000/- per month. It also needs to be noted that there is rise in the amount every year in the valuation of the property and the amount fetch from such property keeping in that mind this court further directed that there would be increase of Rs.500/- every year in the said amount without further reference to this court. Hence, the following order:-

ORDER

a] The application stands partly allowed.

b] Respondents shall deposit the amount of Rs.6,000/- per month hereinafter in the office of this court.

c] There shall be increase of Rs.500/- every year.

d] The applicant is at liberty to withdraw the said amount without requiring any application.

e] Withdrawal of amount is subject to outcome of appeal.

f] Further it is made clear that if there is failure in depositing the amount for consecutive two months, the interim stay granted earlier shall stand vacated automatically.

[KISHORE C. SANT, J.]