

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

**CIVIL APPLICATION NO. 279 OF 2021
IN
FIRST APPEAL NO. 921 OF 2016**

**MR.ULAL R NAYAK
VS
CHRISTOPHER LOPEZ**

Mr.Nachiket D. Jaywant, Advocate for the appellant.
Mr.Chandrakant N. Chavan, Advocate for the respondent.

**CORAM : KISHORE C. SANT, J.
DATED : 23.02.2024**

PC :-

01. Heard parties. This application is moved seeking direction to allow the applicant to withdraw the amount of compensation that is being deposited by the appellant in this Court pursuant to order dated 09.01.2017.

02. This Court by the said order was pleased to stay the judgment and decree passed by the Trial Court subject to condition of the appellant depositing amount of Rs.50,000/- per month in the office of this Court towards compensation, as the appellant is occupying an apartment which is declared to be of the respondent/ original plaintiff. The applicant has also prayed further that the appellant be restrained from carrying out business

activity in the apartment. The applicant has produced on record a letter received by him from the Society. It is stated in the said communication that the appellant is carrying business activity from the apartment. It is requested to take appropriate steps against the occupant of the said flat.

03. The learned Advocate for the appellant opposes the application. A reply is also filed on record. In para 6 of the reply, it is stated that the appellant is a proprietor of 3HD Media and he is doing social work through the said firm. The said firm educates young students. He has denied that this activity is a commercial activity.

04. This Court, therefore, requires to consider the prayer. From the annexures to the application it is also seen that number of visitors visit the apartment. This exhibit is a copy of the extract of visitors' register maintained by the society. It shows that number of visitors visit the said 3HD Media. This Court also has to consider that the respondent has secured a decree. It is declared that he is owner of the said apartment. The appellant/defendant is directed to give peaceful and vacant possession. The applicant is thus deprived of the enjoyment of the property though there is a decree in his

favour. Interest of justice would be met by allowing the applicant to withdraw the amount with certain condition, so as to secure interest of the appellant as well.

05. The learned Advocate for the respondent/appellant specifically makes a statement from the instructions received from his client, who is present in the Court that he is not carrying any business activity. Said statement is taken on record.

06. Hence, the following order :-

(a) The applicant is at liberty to withdraw 50% of the amount deposited by the appellant in this Court in view of the order dated 09.01.2017 along with interest, if any, accrued thereon, on furnishing security to the satisfaction of the Registrar of this Court.

(b) The applicant is allowed to withdraw 100% of the amount with interest accrued, if the applicant furnishes bank guarantee, to be kept alive, during pendency of the appeal to the extent of 50% of the amount.

(c) The applicant shall be entitled to the said amount of Rs.25000/- (Rupees Twenty Five Thousand) per month now

onwards from amount deposited till decision of the appeal. This Order to take effect from March-2024.

07. The application is accordingly allowed.
08. Hearing of the appeal is expedited.

[KISHORE C. SANT,J.]

Corrected pursuant to the speaking to minutes of order dated 6th May, 2024