

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5231 OF 2024

Kakumal Hiranand and Ors.

....Petitioners

V/s.

Sahyadri Sahakari Bank Ltd.

....Respondent

Mr. Rajesh Datar *i/b. Mr. Neel Helekar and Mr. Kanhaiya Yadav for the Petitioners.*

Mr. Vishwajeet Kapse *with Mr. Pawan Tiwari i/b. Mr. Harish R. Pawar for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 6 August 2024.

PC. :

1. This Petition is filed challenging the order dated 7 December 2023 passed by the Appellate Bench of the Small Causes Court rejecting the application for withdrawal of amount of interim compensation deposited in the Court with liberty to file fresh application after decision of the Civil Revision Application No.436 of 2023.

2. I have heard Mr. Datar, the learned counsel for the Petitioners and Mr. Kapse, the learned counsel for the Respondent.

3. It appears that Petitioners suffered decree for eviction dated 30 April 2015 in R.A.E. and C. Suit No.238/398 of 2011. In Appeal No.286 of 2015 the Petitioners were directed to deposit interim compensation @ of Rs.45,000/- per month as a pre-condition for staying the decree. It appears that Petitioners have accordingly deposited the said amount of interim compensation during pendency of the Appeal. The Appeal filed by Petitioners has been allowed by the Appellate Bench on 6 May 2023 and the eviction decree has been set aside. Respondent-Plaintiff has filed Civil Revision Application No.436 of 2023 challenging the decree passed by the Appellate Court dated 6 May 2023.

4. In my view, mere filing of Revision Application by Respondent-Bank challenging the decree of the Appellate Court cannot be a reason for not allowing the Petitioners to withdraw interim compensation deposited during pendency of the Appeal. As held by the Apex Court in *M/S. Atma Ram Properties (P) Ltd V/s. M/S. Federal Motors Pvt. Ltd*,¹ interim compensation is required to be deposited only for delay caused in execution of decree on account of grant of stay by the Appellate Court. Now that the decree itself is set aside, there is no question of executing the same. Thus, Petitioners are not causing any delay in execution of the decree. In that view of the matter, the deposited amount of interim compensation must be permitted to be withdrawn by the Petitioners. This position is reiterated by the Apex Court in its judgment in *State of Maharashtra*

¹. (2005) 1 SCC 705,

V/s. Super Max International Pvt. Ltd.² Consequently, Petition succeeds. Order dated **6 May 2023** passed by the Appellate Bench of the Court of Small Causes is set aside. Petitioners are permitted to withdraw the entire amount of interim compensation deposited in the Court of Small Causes alongwith accrued interest.

5. With the above directions, the Writ Petition is allowed and disposed of.

[SANDEEP V. MARNE, J.]

². (2009) 9 SCC 772