

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

WRIT PETITION NO.9659 OF 2024

Ratilal Ramji Gathani (deleted)

Umesh Ratilal Gathani

V/S

Anantkumar Asharam Jain

....Petitioner

....Respondent

Ms. Puneet Chaturvedi i/b Mr. A.R. Pandey *for the Petitioner.*

Mr. Shreepad Murthy a/w Mr. Abhishek Patil *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 07 AUGUST 2024.

P.C.:

1 The Petition challenges order dated 9 May 2024 passed by Appellate Bench of Small Causes Court disposing of Revision Application No.91 of 2024 has not been maintainable. In that Revision, Petitioner had challenged order dated 25 October 2023 passed by the learned Judge of the Small Causes Court rejecting Application at Exhibit-20 filed for seeking stay to execution of decree during pendency of MARJI Application No.114 of 2023.

2 I have heard Mr. Chaturvedi, the learned counsel appearing for Petitioner and Mr. Murthy, the learned counsel appearing for Respondent/Plaintiff.

3 It appears that the suit has been decreed ex-parte on 23 March 2022 and the Plaintiff has initiated execution proceedings. After lapse of one year, Petitioner/Defendant has filed MARJI Application No.114 of 2023 on 10 March 2023 under provisions of Order 9 Rule 13 of Code of Civil Procedure, 1908 for setting aside the ex-parte decree. With a view to stall execution of the decree, Application at Exhibit 20 was filed after issuance of warrant by the Executing Court on 28 November 2023. The Small Causes Court has proceeded to reject the Application at Exhibit-20 observing that the Petitioner can always apply for restitution of possession in the event he succeeding in the main suit/appeal.

4 The present Petition appears to have been filed by the Petitioner through his constituted attorney Santosh Shrikrishna Manjrekar. It is Mr. Murthy's submissions that said Santosh Manjarekar is actually occupying the suit premises and was in fact found that the suit premises when the Bailiff attempted to execute the warrant of possession. This contention is denied by the learned counsel appearing for Petitioner. Be that as it may. There is already a decree for eviction against Petitioner/Defendant and therefore he cannot be permitted to occupy the premises without making any deposit. Therefore the Petitioner is required to be put to terms for staying the execution proceedings till decision of MARJI Application No.114 of 2023.

5 Accordingly the Writ Petition is disposed of by passing following order:

ORDER

- i) The Small Causes Court shall proceed to decide MARJI Application No.114 of 2023 as well as the application for condonation of delay in an expeditious manner;
- ii) Till the decision of the MARJI Application and/or Application for condonation of delay, the execution proceeding shall remain suspended.
- iii) Petitioner shall deposit in the Small Causes Court interim compensation at the rate of Rs.5,000/- per month from the date of the decree i.e. 23 March 2022.
- iv) The arrears for the period from 23 March 2022 till 30 September 2024 shall be deposited on or before 30 September 2024. Thereafter the Petitioner shall continue depositing the amount of the said interim compensation from October 2024 on 10th day of each successive months.
- v) No further third party rights shall be created in respect of the suit premises.

6 With the above directions, the Writ Petition is **disposed of**.

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(SANDEEP V. MARNE, J.)

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