

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

WRIT PETITION NO.12240 OF 2024

AbbasAli Shabbir Tavawala

....Petitioner

V/S

Mohd. Salehbhai Tavawala & Anr.

....Respondents

Mr. Rajesh Kachare a/w Mr. Sandeep Suryawanshi i/b Tamhane & Co. *for the Petitioner.*

Mr. Gaurav Sawant *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 11 SEPTEMBER 2024.

P.C.:

1 The present Petition is filed challenging the order dated 14 June 2024 passed by Appellate Bench of Small Causes Court allowing MARJI Application No.158 of 2023 and restoring the Appeal No.96 of 2012 which was dismissed for non-prosecution by imposing costs on the Respondent/Appellant. It appears that on account of failure on the part of Respondent/Appellant in depositing the amount of interim compensation, the decree has already been executed and Plaintiff is already in possession of the suit premises. In that view of the matter, there is no question of continuation of any stay in favour of the Respondent/Appellant during pendency of the Appeal.

2 The Petition is filed on account of observation made by the learned Appellate Bench about revival of the interim order with restoration of Appeal. In my view, since possession of the suit premises are already secured by the Plaintiff, there is no question of staying the eviction decree or revival of the interim order. Except this limited clarification, there is no reason to interfere in the discretionary power exercised by the Appellate Bench in restoring the Appeal which was dismissed for non-prosecution. This is not a case which involves inordinate delay in filing application for restoration of the Appeal. It is clarified that there shall not be any interim order operational during pendency of the Appeal, the Writ Petition is **disposed of**.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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