

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14297 OF 2024

Jayshree P. Madhwani since deceased
through legal heirs Nos.1.1 to 1.4
1.1 Pankaj P. Madhwani and Ors.

...Petitioners

V/s.

Purshotamdas Karsandas Ved since
deceased
1(a) Manoj Purshotamdas Ved and
Ors.

...Respondents

Mr. Vishal Kanade with Ms Sneha Kudgaonkar & Ms. Devyani
Bhadang i/b. Mr. D.J. Lulia for the Petitioners.

CORAM : SANDEEP V. MARNE, J.

Dated : 15 October 2024.

P.C. :

1) Petition challenges order dated 30 September 2024 passed by the Appellate Bench of the Small Causes Court, Mumbai, rejecting the application filed by the Petitioners-Plaintiffs at Exhibit-79 filed by Petitioners-Plaintiffs under the provisions of Order XXXIX, Rule 11 of the Code of Civil Procedure, 1908 (**the Code**) seeking dismissal of the appeal.

2) It appears that the R.A.E. & R. Suit No.420/608 of 2003 has been decreed on 21 April 2018 and the Defendants have filed

appeal before the Appellate Bench and are armed with an order of stay passed by the Appellate Bench on 22 March 2019 subject to condition of deposit of interim compensation @ Rs.45,000/- per month from the date of the decree.

3) It is the contention of the Petitioners /Plaintiffs that the Defendants have failed to obey order dated 22 March 2019 and have not deposited the amount of interim compensation. This would only mean that stay order passed by the Appellate Court dated 22 March 2019 would come to an end and the decree would become executable. Accordingly, Petitioners have filed execution proceedings for execution of the decree dated 21 April 2018. Additionally, Petitioners /Plaintiffs filed application at Exhibit-79 seeking dismissal of the Appeal under Order XXXIX Rule 11 of the Code on the ground of violation of order dated 22 March 2019 on the part of the Defendants.

4) In my view, the Appellate Court has rightly held that provisions of Order XXXIX Rule 11 of the Code cannot be invoked in the facts of the present case. The Defendants have secured order dated 22 March 2019 staying execution of the decree on the condition of payment of interim compensation as per the principles enunciated by the Apex Court in ***M/s. Atma Ram Properties (P) Ltd. V/s. M/s. Federal Motors Pvt. Ltd.***¹ In a given case a Defendant, who is facing eviction decree may simply file an appeal and not pray for stay of the decree. Defendants in such a case can take a chance of losing possession of premises during pendency of the appeal and await for decision in appeal. In the event of appeal being allowed and eviction decree being set aside Defendant can apply for restitution of

1. (2005) 1 SCC 705

possession under Section 144 of the Code. Thus all what happens on account of failure on the part of a Defendant to deposit amount of interim compensation is vacation of interim stay to the decree enabling the Plaintiff to execute the decree. In that view of the matter, mere inability on the part of the Defendants in the present case to deposit the monthly compensation of Rs.45,000/- per month as per order dated 22 March 2019 would not amount to breach of an order or undertaking within the meaning of Order XXXIX Rule 11 of the Code. The Appellate Bench has rightly dismissed the application filed by the Petitioners. However, since the Defendants have failed to deposit the amount of interim compensation as directed by the Court on 22 March 2019, Petitioners-Plaintiffs have become entitled to recover possession of the suit premises from the Defendants during pendency of the Appeal. Defendants cannot enjoy possession of the suit premises without depositing the amount of interim compensation. In that view of the matter, the executing court shall expedite the execution proceedings in view of vacation of interim order passed by the Appellate Bench on account of non-deposit of amount of interim compensation by the Defendants.

5) With the above observations, the Writ Petition is disposed of.

[SANDEEP V. MARNE, J.]