



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2779 OF 2025

SUNANDA TUKARAM SONWANE
VERSUS
SURESH BANSILAL JAIN AND ANOTHER

...
Mr. A. J. Patil, Advocate for the Petitioner.

Mr. Niranjan V. Dhake, Advocate for Respondent Nos.1 and 2.

...
WITH
CIVIL APPLICATION NO. 6017 OF 2025
IN WP/2779/2025

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 07th JULY, 2025.

P.C.:-

1. The petitioner impugns order dated 12.12.2023 passed by learned District Judge-4 at Jalgaon in Regular Civil Appeal No.21/2022, by which petitioner is directed to deposit Rs.3000/- per month as condition for grant of stay to eviction decree.

2. It appears that, petitioner/original plaintiff instituted Regular Civil Suit No.147/2015 before Civil Judge Junior Division at Jalgaon claiming relief of perpetual injunction. The respondents filed counter claim seeking decree of possession. The learned Trial Judge recorded finding that petitioner could not prove landlord tenant relationship and she is trespasser. Accordingly, dismissed suit and passed decree in counter claim directing plaintiff to hand over possession of suit property to defendants. In addition, passed decree for mesne profit under Order XX Rule 12(1)(c) of Code of

Civil Procedure. The decree passed by Trial Court is assailed by petitioner in Appeal before learned District Judge at Jalgaon. During pendency of Appeal, an application below Exhibit-5 is filed seeking stay to execution of decree passed in counter claim. The learned District Judge vide impugned order dated 12.12.2023 granted stay to execution of decree, however, subject to condition that petitioner/appellant deposits compensation of Rs.3000/- per month from the date of decree and continue to pay similar amount till disposal of Appeal.

3. Mr. Patil, learned Advocate appearing for petitioner submits that petitioner is tenant in suit property. The learned Trial Court passed decree without appreciating evidence on record. According to Mr. Patil, although learned District Judge has rightly stayed execution of decree, direction to the extent of payment of compensation @ Rs.3000/- per month are erroneous and unwarranted. He would submit that there is no document or material to fix compensation amount @ Rs.3000/- per month. Mr. Patil would further submit that in pursuance to interim order passed by this Court, petitioner has deposited 50% amount of arrears. He would, therefore, urge that learned District Judge may be directed to hear Appeal expeditiously and dispose of the same without insisting for further deposit.

4. Mr. Dhake, learned Advocate appearing for respondents, however, opposes petition and prayers therein and submits that petitioner is enjoying property without paying any rent. She is a rank trespasser. Therefore, learned District Judge has rightly directed her to deposit compensation amount @ Rs.3000/- per month. According to him, property is situated in prime area and area of construction is around 250 square feet. Therefore, no interference is called for.

5. Having considered submissions advanced, it can be observed that learned Trial Court while dismissing suit of plaintiff recorded finding that she is trespasser. There is no rent agreement or evidence depicting landlord tenant relationship. Undisputedly, petitioner is residing in property owned by respondents. Now decree of possession is passed in favour of respondents/plaintiffs in counter claim and same has been stayed. In this background, if such decree is stayed, provision under Order 41 Rule 5 of Code of Civil Procedure contemplates imposition of reasonable terms. The learned District Judge has rightly relied upon observations of Supreme Court of India in case of ***M/s. Atmaram Properties (P) Ltd. Vs. Federal Motors (P) Ltd.***¹.

6. Although Mr. Patil contends that quantification of compensation is at higher side, considering location of property and

¹ (2005) 1 SCC 705.

area in possession of petitioner, this Court do not find it necessary to interfere in discretion exercised by learned District Judge while fixing terms for grant of stay.

7. In result, Writ Petition stands dismissed.

8. In view of dismissal of Writ Petition, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2025