

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5440 OF 2025

Maharashtra Barrel Drum Co. & Ors.

...Petitioners

Versus

Tilak Khetshi Shah Deleted
(Since Decd.) & Ors.

...Respondents

Ms. Pooja Thakkar, for the Petitioners.

Mr. Shravan M. Vyas, for the Respondent No.1(a) to 1(d).

CORAM: MADHAV J. JAMDAR, J.
DATED: 24th APRIL 2025

P.C.:

- 1.** Heard Ms. Thakkar, learned Counsel appearing for the Petitioners and Mr. Vyas, learned Counsel appearing for the Respondent No.1(a) to 1(d).
- 2.** The challenge in this Writ Petition is to the order dated 15th April 2025 passed by the learned Judge of the Small Causes Court, Mumbai below Exhibit-81 in Execution Application No.259 of 2017 in T. E. & R. Suit No.263/284 of 2002.
- 3.** Learned Counsel appearing for the Respondent No.1(a) to 1(d) submits that Appeal is already pending in the Appellate Court of the Small Causes Court. In the said Appeal Stay Application was filed and the eviction decree is stayed on the condition that the Petitioners deposit certain amount as determined by the learned Appellate Court per month as compensation in terms of the law laid down in the case of

*Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd.*¹ He submits that the said order of the Appellate Court is challenged before this Court by filing Writ Petition No.14084 of 2023. The said Writ Petition along with companion Writ Petitions were disposed of by the learned Single Judge by order dated 10th September 2024, by directing that instead of Rs.102.63 per sq.ft. as determined by the learned Appellate Court the Petitioners shall pay Rs.73 per sq. ft.

4. Thus, the Petitioners have been directed to pay Rs.2,92,000/- per month, as the Petitioners are in possession of 4,000 sq. ft area. The said order of the learned Single Judge dated 10th September 2024 is challenged before the Supreme Court and the Supreme Court has rejected the said SLP. He submits that nothing is paid by the Petitioners.

5. As the Petitioners failed to pay the said amount, the Petitioners are not entitled to stay of the eviction decree. Even in view of the said conduct of the Petitioner it is not necessary to entertain the Writ Petition, filed under Article 227 of the Constitution of India, as the said jurisdiction is equitable and discretionary jurisdiction. Thus unless the said amount determined as compensation as confirmed by the Supreme Court is deposited before the Small Causes Court, Mumbai, Writ Petition need not be entertained.

6. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

¹ (2005) 1 SCC 705

7. Liberty is granted to file fresh Writ Petition challenging the impugned order if the said order dated 10th September 2024 of the learned Single Judge as confirmed by the Supreme Court is complied with.

[MADHAV J. JAMDAR, J.]