

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16359 OF 2025**

Katty Minoo Dastur & Anr.	...Petitioners
<i>Versus</i>	
WMT Apparels Pvt. Ltd.	...Respondent

Mr. Cyrus Jal a/w. Mr. Harshavardhan Khambete and Mr. Deep Shah, for the Petitioners.
Mr. Manu T. Ramchandran i/b. MSS Law Partners, for the Respondent.

CORAM:	MADHAV J. JAMDAR, J.
PRONOUNCED ON	9th DECEMBER 2025
UPLOADED ON	30th DECEMBER 2025

JUDGMENT:

1. Heard Mr. Cyrus Jal, learned Counsel appearing for the Petitioners and Mr. Manu T. Ramchandran, learned Counsel appearing for the Respondent.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the legality and validity of the order dated 10th November 2025 passed by the learned Appellate Bench of the Small Causes Court, Mumbai below Exhibit-34 in Appeal No.50 of 2023 in R.A.E. Suit No.1868 of 2009. By the impugned order, the said application bearing Exhibit-34, seeking stay of six weeks to the eviction decree as confirmed by the learned

Appellate Court for the purpose of availing further legal remedy is allowed by imposing certain conditions. The Operative Part of the impugned order dated 10th November 2025 reads as under:

“ORDER

“1. Application (Exhibit 34) is allowed and operation of order dated 10.11.2025 passed in (A1) Appeal No. 50 of 2023 is stayed for period of six weeks on following conditions.

a) The appellants shall deposit ₹ 33,000/- per month from 19.11.2009 till 31.12.2010 as interim compensation in the Court.

b) The appellants shall deposit ₹ 37,000/- per month from 01.01.2011 till 31.12.2012 as interim compensation in the Court.

c) The appellants shall deposit ₹ 41,500/- per month from 01.01.2013 till 31.12.2014 as interim compensation in the Court.

d) The appellants shall deposit ₹ 46,000/- per month from 01.01.2015 till 31.12.2016 as interim compensation in the Court.

e) The appellants shall deposit ₹ 51,000/- per month from 01.01.2017 till 31.12.2018 as interim compensation in the Court.

f) The appellants shall deposit ₹ 56,700/- per month from 01.01.2019 till 31.12.2020 as interim compensation in the Court.

g) The appellants shall deposit ₹ 63,000/- per month from 01.01.2021 till 31.12.2022 as interim compensation in the Court.

h) The appellants shall deposit ₹ 70,000/- per month from 01.01.2023 till 05.03.2023 as interim

compensation in the Court and for period of further six weeks from the date of this order.

i) Out of the total amount payable, 50% shall be deposited within two weeks from the date of this order, and the remaining 50% within the following two weeks, failing which the respondents/plaintiffs shall be at liberty to execute the decree.

*j) If, within period granted, appellants failed to bring any order, then after expiry of six weeks period, **the amount deposited be handed over to respondent which shall be adjusted against mesne profit, if any.***

k) The appellants shall file undertaking on affidavit within eight days from today to effect without fail to not part with the possession of the suit premises and will not create any third party interest.

2. Costs in main cause.”

(Emphasis added)

3. Before considering the legality and validity of the impugned order, it is required to note certain admitted factual aspects.

i. The Respondent who is the landlady filed R.A.E. Suit No.1868 of 2009 on 18th November 2009.

ii. On 6th March 2023, learned Trial Court passed the Judgment and Decree of eviction in said R.A.E. Suit No.1868 of 2009

iii. The Petitioner filed Appeal No.50 of 2023 challenging the Judgment and Decree of the learned Trial Court.

- iv. An application seeking stay of the Judgment and Decree dated 6th March 2023 was preferred bearing application Exhibit-6 in Appeal No.50 of 2023 and the learned Appellate Court stayed the execution of the impugned eviction decree till final decision of the said Appeal by order dated 16th October 2023 *inter alia* on the condition that the Appellants shall deposit arrears of compensation at the rate of Rs.80,000/- per month for the period from 6th March 2023 onwards per month till final decision of the Appeal.
- v. The said order was challenged by the present Petitioners before this Court by filing Writ Petition No.13908 of 2023 and a learned Single Judge by order dated 18th December 2024 reduced the said interim compensation from Rs.80,000/- to Rs.70,000/- per month.
- vi. Thereafter, the said Appeal No. 50 of 2023 was heard on merits and the learned Appellate Court of the Court of Small Causes, Mumbai dismissed the said Appeal by the Judgment and Decree dated 10th November 2025.
- vii. The present Petitioners i.e. original Appellants/Defendants-tenants have filed an application bearing Exhibit-34 in Appeal

No.50 of 2023 seeking stay to the execution and operation of the eviction decree passed by the learned Trial Court as confirmed by the learned Appellate Court for a period of six weeks to enable the present Petitioners to take appropriate legal recourse. As set out herein above, while granting stay of six weeks, the learned Appellate Court by the impugned order dated 10th November 2025 has directed the present Petitioners to deposit an amount of Rs.33,000/- per month from 19th November 2009 till 31st December 2010, Rs. 37,000/- per month from 01st January 2011 till 31st December 2012, Rs. 41,500/- per month from 01st January 2013 till 31st December 2014, Rs. 46,000/- per month from 01st January 2015 till 31st December 2016, Rs. 51,000/- per month from 01st January 2017 till 31st December 2018, Rs. 56,700/- per month from 01st January 2019 till 31st December 2020 , Rs.63,000/- per month from 01st January 2021 till 31st December 2022 and Rs.70,000/- per month from 01st January 2023 till 05th March 2023 and for further six weeks towards interim compensation.

viii. The said order dated 10th November 2025 of the learned Appellate Court is challenged by filing this Writ Petition.

4. Mr. Cyrus Jal, learned Counsel appearing for the Petitioners submitted that the order passed by the learned Appellate Court is beyond the scope of Order XLI Rule 5 (2) of the CPC. He submitted that in fact, the tenancy of the Petitioners would stand terminated after the learned Trial Court decreed the suit and therefore, the impugned order passed without taking into consideration the said aspect is totally illegal. He further submitted that in any case, the learned Trial Court has passed eviction decree and directed enquiry of mesne profit under order XX Rule 12 of the CPC and no decree of determining mesne profit is passed. He therefore, submitted that the impugned order passed is outside the scope of Order XLI Rule 5 (2) of the CPC.

5. Mr. Manu T. Ramchandran, learned Counsel appearing for the Respondent *inter alia* raised the following contentions:

- i. There is no specific provision for grant of stay after the Appellate Court dismissed the Appeal under the provisions of the Maharashtra Rent Control Act, 1999 (“MRCA”) and therefore, by invoking its inherent power under Section 151 of the CPC based on the request of the Petitioners and also noticing that there is no further appeal provision under the

MRCA and the condition for stay is imposed with the underlying principles of Order XLI Rule 5 of the CPC.

- ii. The learned Appellate Court has also taken note of the offer of the Petitioner an amount of Rs.80,000/- as security for the due performance of the decree. The Ld. Appellate Bench of the Court of Small Cause has also taken note of the judgment of the High Court in Previn Govind Sharma Vs. Dinyar Jal Jamshedji & Ors. 2019 SGLS (Bom.) 1647 that while imposing condition under Order XLI Rule 5. the Court does not determine the mesne profits but merely prescribes reasonable terms for stay and particularly noted from the said judgment that such assessment for reasonable terms necessarily involves a certain degree of estimation and discretion, guided by common sense rather than mathematical precision.
- iii. The Ld. Appellate Bench of the Court of Small Cause reiterated and clarified that it is not adjudicating upon mesne profits but only stipulating reasonable conditions for the grant of temporary stay.
- iv. The present monthly compensation in the year 2025 for the suit property in any case would be over Rs.2,00,000/- per

month, but the Ld. Appellate Bench has fixed the monthly compensation from the year 2023 as Rs.70,000/- only for a reasonable compensation for the purpose of stay and having noticed the Petitioner being in possession of the suit property even prior to the institution of the suit, fixed the compensation from the year of filing the suit at a reasonable notional scale of compensation and has even granted two instalments as well in the impugned order.

- v. The Ld. Appellate Bench has taken note of the judgment of this Hon'ble Court that while deciding condition under Order XLI Rule 5 of CPC is not to determine mesne profits and has adopted a fair and reasonable approach based on the surrounding circumstances.
- vi. The Order XLI Rule 5 CPC is an equitable discretionary jurisdiction of an Appellate Court. The Petitioner despite there being concurrent findings of encroachment over and above 60% of the rented premises is not willing to handover the suit premises to the landlord.
- vii. It is submitted that in the impugned order even if there is a mere breach of, or non-conformity with, the provisions of

Code of Civil Procedure or the similar other procedural laws, it will not be a ground for interfering with the impugned order of the Appellate Bench of the Court of Small Cause and this Hon'ble Court powers under Article 227 are intended to be exercised with a view to subserve and not to defeat the ends of justice. As a general rule where substantial justice has been done by order of the lower Court by reading the order as a whole and no fundamental errors or miscarriage of justice is apparent, this Hon'ble Court is not required to interfere with a reasonable order notwithstanding the fact that the reasons for the order are not correct or the order is improper or irregular. The Petitioner cannot claim this discretionary equity power as a matter of right and the Appellate Bench of the Court of Small Cause has acted within their authority and has not over stepped their jurisdiction.

viii. The language as used in Order 20 Rule 12 is very plain and unambiguous that an enquiry for mesne profit can be directed from the institution of the suit until delivery of the possession of the suit premises. Accordingly, the ratio of the judgment in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹ at point (2) as regards mesne profit can be granted

1 (2005) 1 SCC 705

only from the date of decree is incorrect and per incuriam as the said decision at point (2) is made in ignorance or forgetfulness of a binding statute i.e. Order XX Rule 12 CPC making the decision erroneous and not binding on lower Courts, essentially an exception to the rule of precedent stare decisis.

- ix. The definition of "mesne profit" as contained in clause 2 (12) of the MRCA which reads "mesne profit" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. It is therefore, submitted that from a conjoint reading of this definition clause with Order XX Rule 12 of CPC, a landlord may receive mesne profit from the date of filing of the suit from independent enquiry for such mesne profit based on the facts and circumstances of each case. Such an enabling provision will also have purposive advantage unlike the previous conditions of non-availability of residential/commercial places in various parts of the state of Maharashtra and the amendment in the definition of "tenant"

in the MRCA is carried out to serve this purpose of balancing the rights of the landlord (encourage more investments in the state) and tenant.

x. Thus, it is submitted that the Writ Petition be dismissed.

6. At the outset it is required to be noted that although, Mr. Ramchandran, learned Counsel appearing for the Respondent raised several contentions, the contentions which are necessary for deciding this Writ Petition are only considered.

7. Learned Appellate Court has relied on the provisions of Order XLI Rule 5 of the CPC and held that although the said provision is not directly applicable, the principles therein can apply. Said Order XLI Rule 5 reads as under:

“5. Stay by Appellate Court.-(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

[Explanation.—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge,

stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) Stay by Court which passed the decree.—Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) 1 [Subject to the provision of sub-rule (3),] the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]”

(Emphasis added)

8. Sub-clause 2 of Rule 5 of Order XLI empowers the Appellate Court which pass the decree to stay the execution of decree where the application has been made without unreasonable delay, substantial loss may result to the party applying for stay of execution of the

decree unless the order is made and that security has been given by the Applicant for due performance of such decree or order as ultimately be binding upon him.

9. The only prayer made by the Petitioners is stay of eviction decree for a period of six weeks to take appropriate legal recourse. It is required to be noted that while exercising the power under Order XLI Rule 5, no unreasonable condition can be imposed by the learned Appellate Court. Condition which the learned Appellate Court has put that deposit of various amounts starting from the institution of the suit till the passing of the order by the learned Trial Court is totally unreasonable and unjust. No such condition can be imposed which will be so onerous that the Petitioner will not be able to approach this Court challenging the impugned Judgment and Decree of the learned Appellate Court.

10. The learned Appellate Court of the Small Causes Court while passing the said order has relied on the decision of this Court in the case of *Previn Govind Sharma vs. Dinyar Jal Jamshedji & Ors.*² . However, it is required to be noted that the said decision is concerning the compensation which tenant is required to deposit after the eviction decree has been passed during the pendency of Civil

Revision Application. The said amount is required to be paid in view of the law laid down by the Supreme Court in the case of ***Atma Ram Properties (P) Ltd.*** (supra). It is required to be noted that the Supreme Court in the case of ***Atma Ram Properties (P) Ltd.*** (supra) has specifically observed that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. It has been further held that in the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.

11. Thus, in effect what has been held by the Supreme Court in the case of ***Atma Ram Properties (P) Ltd.*** (supra) is that once the Trial Court passes the decree of eviction, there is severance of relationship of landlord and tenant and therefore, when the said decree of eviction is challenged in the Appellate Court by way of Appeal and

after the dismissal of Appeal before this Court by way of Civil Revision Application or Writ Petition, as there is severance of relationship of landlord and tenant and the tenancy would stand terminated with effect from the date of the decree passed by the learned Trial Court or the learned Appellate Court as the case may be the Court granting stay to the eviction decree can impose reasonable terms so as to compensate the landlord in case ultimately the eviction decree is affirmed by the Appellate Court/High Court.

12. It is required to be noted that scope of Order XLI Rule 5(2) of the CPC is stay of execution of decree by the Court which passed the decree on sufficient cause being shown only for limited period. The Petitioner has only sought stay of six weeks of the decree passed by the learned Appellate Court for the purpose of availing the remedy before higher forum.

13. It is significant to note that in this particular case, the learned Trial Court has decreed the suit and passed the eviction decree by Judgment and Decree dated 6th March 2023. The said Judgment and Decree of the learned Trial Court is challenged by the present Petitioners by filing Appeal No.50 of 2023 and in the said Appeal, an order has been passed on Exhibit-6 application by which stay has

been granted to the eviction decree passed by the learned Trial Court by the learned Appellate Court by directing that the present Petitioners i.e. the Appellants to deposit an amount of Rs.80,000/- per month from the date of decree i.e. 6th March 2023 onwards. The said amount of Rs.80,000/- per month has been reduced by learned Single Judge by passing order in Writ Petition No.1390 of 2023 to Rs.70,000/- per month.

14. Thus, what is important to note is that order in terms of ***Atma Ram Properties (P) Ltd.*** (supra) has already been passed which was operating during the pendency of the Appeal. Thereafter, the learned Appellate Court dismissed the Appeal by Judgment and Decree dated 10th November 2025 and at that stage the Appellants i.e. present Petitioners sought stay of six weeks to avail further legal remedies and while granting stay of six weeks, the learned Appellate Court has directed payment of certain amount as compensation from the date of filing of the suit.

15. In view of the above background, what is relevant to note is that the learned Trial Court while decreeing the suit passed the following order:

“आदेश

१. दावा खर्चासह मंजुर करण्यात येतो.
२. प्रतिवादींनी दावा इमारतीमधील तिस—या मजल्यावरील दुकान नं. ३० आणि ३१, क्षेत्र १०६३ चौ. फु., या दावा मिळकतीचा शांततामय व खुला ताबा वादीस प्रस्तुत आदेशाचे तारखेपासून २ महिन्यांचे आत द्यावा.
३. हुकुमनाम्याचे तारखेपासून ते दावामिळकतीचा खुला ताबा मिळेपर्यंतच्या कालावधीकरिता दरम्यानचे उत्पन्नासाठी दिवाणी प्रक्रिया संहितेच्या आदेश २० नियम १२ प्रमाणे स्वतंत्र चौकशी करण्यात यावी.
४. येणेप्रमाणे हुकूमनामा तयार करण्यात यावा.”

(Emphasis added)

English translation of the same is as under:

“ORDER

- 1. Suit is allowed together with costs.*
- 2. The Defendant shall handover the peaceful and vacant possession of the suit property viz. Shop No. 30 and 31, area admeasuring 1063 sq.ft. located on third floor in the building involved in the Suit, to the Plaintiff within 2 months from the date of this Order.*
- 3. For the mesne profits for the period from the date of the Decree till receiving the vacant possession of the suit property, separate enquiry shall be carried out under Order 20, Rule 12 of the Civil Procedure Code.*
- 4. Decree shall be drawn accordingly.”*

(Emphasis added)

Thus, the learned Trial Court has passed the eviction decree and also directed that a separate inquiry under Order XX Rule 12 be held as regards mesne profit. The said inquiry as contemplated under

Order XX Rule 12 is inquiry as to rent or mesne profits from the institution of the suit until the delivery of possession to the decree holder. The said inquiry will be separately held.

16. The scope of enquiry before the learned Appellate Court was only to consider whether eviction decree passed by the learned Trial Court as confirmed by the learned Appellate Court is to be stayed for a period of six weeks so as to give opportunity to the Petitioner to avail further remedies. The learned Appellate Court while staying the eviction decree for six weeks imposed the conditions as set out in the impugned order.

17. The reliance of the learned Appellate Court on the decision of this Court in the case of *Previn Govind Sharma* (supra) is totally unwarranted. The said case is on the basis of the principles of law laid down in *Atma Ram Properties (P) Ltd.* (supra) and admittedly, in that case also direction to pay compensation is after the decree. This is not a case where the learned Trial Court has passed the order in enquiry of mesne profit conducted under Order XX, Rule 12 of the CPC and the stay of such order is sought. Therefore, the impugned order of the learned Appellate Court passed below Exhibit-34 in Appeal No.50 of 2023 in R.A.E. Suit No.1868 of 2009

putting onerous conditions for granting stay of six weeks is beyond the scope of Order XLI Rule 5 of the CPC. Thus, the same is required to be quashed and set aside.

18. The application bearing Exhibit-34 filed by the Petitioners seeking stay to the eviction decree for a period of six weeks passed by the learned Trial Court as confirmed by the learned Appellate Court is allowed for a period of six weeks on the condition that the Petitioners deposit an amount of Rs.70,000/- per month as well as rent of Rs.780/- per month as directed to be deposited during the pendency of the Appeal and that the Petitioners shall not create third party interest with respect to the suit premises.

19. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]

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