

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

WRIT PETITION NO.1497 OF 2026

Savitadevi Shantilal Jain

....Petitioner

V/S

Bharat Jethalal Maniar & Ors.

....Respondents

Mr. Shravan M. Vyas with Mr. Vivek Vyas *for the Petitioner.*
Ms. Divya Parab *for Respondents.*

CORAM : SANDEEP V. MARNE, J.
DATE : 6 APRIL 2026.

P.C.:

1. The Petition challenges order dated 4 December 2025 passed by Appellate Bench of Small Causes Court on Application at Exhibit-8 filed in Miscellaneous Appeal No.99 of 2025. By the impugned order, the Appellate Court has imposed condition of deposit of interim compensation at the rate of Rs.40,000/- per month from the date of decree for staying the eviction decree. The Appeal before the Appellate Bench was not filed against substantive decree. The Appeal was filed only challenging the order dated 3 September 2025 refusing to condone the delay in filing Application for setting aside *ex-parte* decree. The Appellate Court has condoned the delay in filing Application for setting aside *ex-parte* decree and has directed decision of the Application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (**Code**) by the Trial Court on merits. However, it has imposed a condition of deposit of interim compensation for staying the execution of the eviction decree.

2. I have heard Mr. Vyas, the learned counsel appearing for the Petitioner/Defendant and Ms. Parab, the learned counsel appearing for the Respondents/Plaintiffs.

3. The Appellate Court has relied upon provisions of Order XLI Rule 5(1) of the Code while fixing interim compensation. However, Order XLI Rule 5(1) of the Code applies when the Appellate Court is requested to consider application for stay of decree in a substantive Appeal challenging the decree. In the present case, the Petitioner/Defendant has not filed a substantive appeal challenging the eviction decree and therefore, provisions of Order XLI Rule 5(1) of the Code would ordinarily not apply to the facts of the present case. The Miscellaneous Appeal challenged only the order refusing to condone delay and cannot be treated as a substantive Appeal for the purpose of application of provisions of Order XLI Rule 5(1) of the Code. More importantly, the Appeal has been disposed of by separate order passed on 4 December 2025, therefore, nothing would remain pending before the Appellate Court. Since no proceedings would remain pending before the Appellate Court, exercise of powers under Order XLI Rule 5(1) of the Code by the Appellate Court was clearly unwarranted.

4. Mr. Vyas relies upon judgment of the Apex Court in ***Kumud Datta Lata Das vs. Indu Prasad¹*** in which it is held in paragraphs 2 and 3 as under:

“2. This appeal by special leave arises from the order made on April 16, 1996 by the Delhi High Court in LA. No.8629/95 in Suit No.3781/90. The suit

1 MANU/SC/0015/1997

was for possession of the property from the appellant. The plaintiff is the mother-in-law of the appellant. The appellant and her husband are not able to live amicably in matrimonial tie. The proceedings for divorce are pending. The appellant is in possession of the property and, therefore, the respondent-mother-in-law filed a suit for possession on the basis of her alleged title. The appellant was set ex parte and the application under Order 9, Rule 13 CPC is now pending before the High Court. The application for restoration of the decree has been disposed of with directions to deposit and to continue to deposit mesne profits at the rate of Rs.2,000 per month from the date of ex-parte decree. Hence, this appeal by special leave.

3. In view of the fact that the parties are closely related and the matter has been disposed of ex-parte, we are of the view that it is not a fit case to impose costs of depositing mesne profits from the date of ex-parte decree and to continue to deposit it as a condition to contest the application to set aside ex-parte decree. Moreover, such onerous condition is not valid, though discretionary.”

5. The judgment in *Kumud Lata Das* (supra) is delivered before the enunciation of law by the Hon’ble Apex Court in *M/s. Atmaram Properties (P) Ltd. vs. M/s. Federal Motors Private Limited*². However, the fact remains that the Appellate Court was considering merely the issue of condonation of delay in filing Application under Order IX Rule 13 of the Code. Therefore, it had no occasion to decide the issue of fixation of interim compensation. In the event Application filed under Order IX Rule 13 of the Code is allowed by the Trial Court, the suit would be reopened. There is no provision in the Code for fixation of interim compensation during pendency of the suit. The net effect of the impugned order passed by the Appellate Court is such that the Petitioner/Defendant may have to pay interim compensation during pendency of the suit, if the same is restored.

6. In my view therefore, the Appellate Court has grossly erred in directing deposit of amount of Rs.40,000/- per month towards interim

² (2005) 1 SCC 705

compensation as a condition for granting stay to the decree while allowing Petitioner's Miscellaneous Appeal against order of the Trial Court refusing to condone the delay.

7. At the same time, it is seen that Respondents/Plaintiffs would suffer on account of negligent conduct of the Petitioner/Defendant. The Appellate Court has imposed costs of only Rs.10,000/- while condoning the delay. However, the order dated 4 December 2005 passed in Miscellaneous Appeal No.99 of 2025 is not under challenge in the present Petition. Mr. Vyas, on taking instructions from his client, fairly submits that this Court can increase the quantum of costs imposed by the Appellate Court instead of directing the Petitioner/Defendant to deposit the amount of interim compensation.

8. I accordingly proceed to pass the following order:

- i) Order dated 4 December 2025 passed by the Appellate Bench of Small Causes Court is set aside to the limited extent of fixation of and direction to deposit interim compensation at the rate of Rs.40,000/- per month. Rest of the order shall remain operative.
- ii) Petitioner/Defendant shall pay to the Respondents/Plaintiffs additional amount of costs of Rs.40,000/- within a period of two weeks. Subject to payment of enhanced amount of costs, the decree in the suit shall remain suspended till the Trial Court decides Application under Order IX Rule 13 of the Code.

9. All rights and contentions of the parties on merits are expressly kept open.

10. With the above directions Writ Petition is partly allowed and disposed of.

(SANDEEP V. MARNE, J.)

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KATKAM
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