



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10799 OF 2026

1. Mr. Suresh Atalrai Keswani
Aged : 68 years,
Occ. : Business, Indian Inhabitant,
Residing at 2D, 2nd Floor,
Pallonji Mansion, 43, Cuffe Parade,
Mumbai – 400 050

2. Mrs. Shakuntala Suresh Keswani
Aged : 65 years,
Occ. : Housewife, Indian Inhabitant,
Residing at 2D, 2nd Floor,
Pallonji Mansion, 43, Cuffe Parade,
Mumbai – 400 050

.... Petitioners.

Vs.

Mr. Mahesh Atalrai Keswani
Aged : 56 years,
Occ. : Business, Indian Inhabitant,
Having Permanent Address at :
1D, Pallonji Mansion, 4, Cuffe Parade,
Mumbai – 400 005

And present having temporary
address for Service at :

C/o Gautam Bhachani, 703-704,
Golden Peak Society, Khar (West),
Mumbai – 400 052

.... Respondent

Sr. Adv. Vineet Naik a/w Adv. Sukand Kulkarni, Adv. Pranita Sabool, Adv.
Kartikeya Desai and Adv. Tanvi Parmar i/by Kartikeya & Associates for
Petitioners.

Adv. Sanjay Jain a/w Adv. Nishant Vyas, Adv. Ishwar Nankani, Adv. Huzefa Khokhawala & Adv. Kartik Gupta i/by M/s. Nankani & Associates for Respondent.

CORAM : ARUN R. PEDNEKER, J.
RESERVED ON : 2nd September 2026
PRONOUNCED ON : 21st September 2026

P.C. :

1. Heard the learned Counsel appearing for the parties.
2. By the present Writ Petition, the Petitioners challenge the Order dated 23rd April 2026 passed by the learned Appellate Bench of the Small Causes Court at Mumbai on an application filed by the Petitioners (Original Defendants), being Exhibit 'A' in P. Appeal No. 6 of 2026 in L.E. Suit No. 150/188 of 2011.
3. By the said Order, the learned Appellate Court has conditionally allowed the Application (Exhibit-10) taken out by the Applicants (Original Defendants) under Order XLI Rule 5 of the Code of Civil Procedure, 1908 ("CPC"), seeking stay of the execution of the eviction Decree dated 26th November 2024 passed in L.E. Suit No. 150/188 of 2011.
4. The stay to the eviction decree has been granted subject to the conditions set out in Clause 2 of the impugned Order dated 23rd April 2026.
5. The Petitioners challenge the conditions imposed for granting stay to the operation of the eviction Decree passed by the Trial Court, contending that such conditions are onerous and excessive.

6. The facts giving rise to the present Petition, in brief, are as under :

The Plaintiff/ present Respondent filed L.E. Suit for eviction and mesne profits pleading that Defendant No. 1, who is the Plaintiff's elder brother, is occupying the Suit Premises, being Flat No. 2D, admeasuring approximately 4,000 sq. ft., situated on the 2nd Floor of Pallonji Mansion, 43, Cuffe Parade, Mumbai – 400 050 (hereinafter referred to as “the Suit Premises”), as a gratuitous licensee.

. It is the case of the Plaintiff that, sometime in or about 1982–1983, the Plaintiff permitted Defendant No. 1 to use and occupy the Suit Premises for residential purposes. Such occupation was purely permissive and was granted without charging any compensation, rent or license fee. Accordingly, Defendant No. 1 occupied the Suit Premises as a gratuitous licensee of the Plaintiff.

7. Defendant No. 1 is also a member of the housing society in which the Suit Premises is situated. Defendant No. 1 owns Flat No. C on the Ground Floor of C Wing, whereas Defendant No. 2 is the wife and Defendant no.1 is also the owner of Flat No. 5B on the 5th Floor of B Wing.

8. The Plaintiff called upon Defendant No. 1 to vacate the Suit Premises. However, Defendant No. 1 failed and neglected to do so. Consequently, by a letter dated 10th August 2011, the Plaintiff terminated the gratuitous licence

granted to Defendant No.1 and called upon him to vacate and hand over peaceful possession of the Suit Premises to the Plaintiff.

9. In response, Defendant No. 1 called upon the Plaintiff to establish and produce proof of his ownership in respect of the Suit Premises, thereby disputing and challenging the Plaintiff's title thereto.

10. In view of the continued occupation of the Suit Premises by Defendant No. 1 and the dispute raised by him regarding the Plaintiff's title, the Plaintiff was constrained to institute the present Suit seeking, *inter alia*, eviction of Defendant No. 1 from the Suit Premises and recovery of possession thereof, along with the other reliefs claimed in the Suit.

11. From the records, it appears that Defendant No. 1 and his family own other flats in the building, while the Plaintiff holds one flat therein i.e. the Suit property. It is the case of Defendant No.1 that he could not hold multiple flats in the same society and, therefore, he purchased some flats in the names of his wife, his son, and also the Plaintiff. According to Defendant No.1, the entire consideration for the suit flat was paid by Defendant no.1.

12. The remaining flats standing in the name of Defendant No. 1, namely Flat Nos. 1D and 2D, were under requisition by the Government of Maharashtra at the time of their purchase. Defendant No.1 had de-requisitioned these flats on the representation that he did not own any

premises for his occupation. The said flats were subsequently de-requisitioned by the State on the representation of Defendant no.1.

13. The Trial Court, after considering the material on record, held that Defendant Nos. 1 and 2 were gratuitous licensees occupying the suit premises since 1982–1983 and that their gratuitous license was terminated on 10 August 2011. The Trial Court further directed Defendant No. 1 to pay mesne profits at the rate of Rs. 500/- per sq. ft. per month from the date of the suit until actual recovery of possession. For quantification of the mesne profits, the Trial Court directed that an application under Order XX, Rule 12C of the Code of Civil Procedure be filed.

14. Aggrieved by the said judgment and decree, Defendant No. 1 preferred an Appeal before the Appellate Bench of the Small Causes Court. Defendant No. 1 also filed an application at Exhibit 10 under Order XLI, Rule 5 of the Code of Civil Procedure seeking a stay of the eviction decree.

15. The said application was allowed, subject to the condition that the Appellant shall deposit an amount of Rs. 3,00,000/- per month as interim compensation in the Court, commencing from October 2011 up to April 2026, within a period of three months from the date of the order, and shall also deposit the said amount every month thereafter, at the same rate, towards interim compensation. The following conditions are imposed for the

stay of the decree :

“(a) The appellants shall deposit Rs.3,00,000/- (Rs. Three Lakhs Only) per month as an interim compensation in the Court from October 2011, till the month of April 2026, within the period of three months from the date of the order, failing which this order of the stay stands vacated.

(b) The appellants shall continue to deposit the monthly compensation at the same rate from May- 2026 onwards on or before 10th day of each succeeding month, till final disposal of the appeal.

(c) The amount deposited as an interim compensation shall be invested in any Nationalised Bank initially for a period of one year, if required would be extended.”

16. Challenging the aforesaid conditions imposed for grant of stay of eviction decree, the learned **Senior Counsel, Mr. Vineet Naik** for the Petitioners submits that the Suit filed by the Petitioners seeking a declaration of ownership is pending consideration. He has also produced the receipt evidencing payment towards the purchase of the said suit flat. The learned Counsel further submits that the Plaintiff was about 22 years of age at the time of purchase of the flat and did not have the financial means to acquire the same. According to the Petitioners, the flat was, in fact, purchased by the Petitioner.

17. In the facts and circumstances, the learned Counsel for the Petitioners submits that the conditions imposed for grant of stay of eviction are onerous.

In support of his submissions, he relies upon the following judgments:-

- (i) State of Maharashtra & Anr. V. Super Max International Pvt. Ltd. & Ors.¹,
- (ii) Lifestyle Equities Vs. Amazon Tech Inc,²
- (iii) Majbur Rehman Haji Isar Alam Siddhiqui Vs. K.T. Kubal & Co.³

18. *Per contra*, **learned counsel, Mr. Sanjay Jain** for the Respondent submits that the Petitioners have other flats in the same building where the suit flat is situated and that the Share Certificate and the ownership documents of the suit flat is in the name of the Respondent/Plaintiff. It is further submitted that the Petitioner no.1/ Defendant No.1 had made various representations to the State seeking de-requisition of the other properties, wherein he has admitted that he had no other premises and that he was living in the flat owned by the Respondent/Plaintiff. Thus, there is absolutely no cloud on the title of the Plaintiff.

. He further submits that the suit for eviction has been allowed in favour of the Plaintiff. He further submits that the rentals of the suit premises are more than Rs. 6,00,000/- per month; however, the Appellate Court has granted only over Rs. 3,00,000/- per month and only from the date of the suit. Learned counsel submits that the license was terminated in the year 2011 and that the compensation has to be paid from one month after the

1 (2009) 9 SCC 772,

2 2025 SCC OnLine SC 2153

3 (2017) (6) Bom. C.R. 382

termination of the license. He submits that the Appellate Court has been more than fair to the Petitioner, and that this Court may not interfere with the order passed by the learned Appellate Court.

19. Learned counsel for the Respondent (Defendant) relies upon the following judgments :

- (i) M/s Atma Ram Properties (P) Ltd. V. M/s Federal Motors Pvt. Ltd.⁴
- (ii) State of Maharashtra & Anr. Vs. Super Max International Pvt. Ltd. & Ors.⁵,
- (iii) Majbur Rehman Haji Israr Alam Siddhiqui Vs. K.T. Kubal & Co.⁶
- (iv) Safset Agencies Private Ltd. Vs. Riddhi Rahul Kumar Gosalia & Ors.⁷
- (v) Cesil Charles Brako & Ors. V. Surekha Hanumant Tawade & Ors.⁸
- (vi) R. Rajagopal Reddy (Dead) by LRs. And Ors. s. Padmini Chandrashekharan (Dead) by LRs.⁹

20. Having considered the rival submissions, the question that arises for consideration is whether the conditions imposed for the grant of stay, of the eviction decree, of a gratuitous licensee are onerous in the facts of the present case. Admittedly, the suit filed by the Petitioner for a declaration of

4 (2005) 1 SCC 705.

5 AIR 2010 Supreme Court 722.

6 (2017) (6) Bom. C.R. 382,

7 (2024) SCC OnLine Bom. 3127.

8 (2018) SCC OnLine Bom. 14719,

9 (1995) 2 SCC 630.

ownership is pending consideration. There is a receipt produced on record by the Petitioner, *prima facie* indicating that the Petitioner has made payment for the suit premises. However, the Petitioner has also, in his communications addressed to the State seeking de-requisition, of the flats in the same building has admitted that he does not own any other premises. It was on the basis of this submission of the Petitioner that the other flats of the Petitioner in the Society were de-requisitioned by the State.

21. The trial Court has held that the Petitioner is a gratuitous licensee and has consequently passed the decree of eviction while the Appellate Court in Appeal has granted stay of eviction subject to conditions as noted hereinabove. The provisions of the Code of Civil Procedure, 1908, governing the grant of stay of eviction by the Appellate Court is contained in Order XLI Rule 5, which is reproduced hereinbelow for ready reference:

**“ORDER XLI :
APPEALS FROM ORIGINAL DECREES**

1. **Form of appeal-What to accompany memorandum.-**
2.
3.
4.
5. **Stay of proceedings and of execution**

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 a 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;

and

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

(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) [Subject to the provisions 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.]”

22. Order XLI, Rule 5, Sub-Clause 2 enables the Appellate Court to grant a stay of execution of an appealable decree upon sufficient cause being shown. However, Sub-Rule 3 provides that no order for stay of execution

shall be made under Sub-Rule 1 or Sub-Rule 2 unless the Court making it is satisfied that:

- a) That substantial loss may result to a party applying for stay of execution unless the order is made;
- b) that the application has been made without unreasonable delay and
- c) that the security has been given by the Applicant for the due performance of such decree or order as may ultimately be binding upon him.

23 In the instant case, there is an eviction order passed against the Petitioner, who is a gratuitous licensee holding over the premises after his license was terminated. While considering the provisions of Order XV-A of the CPC, this Court has held that Order XV-A applies to a gratuitous licensee as well, and directions can be issued to deposit compensation during the pendency of the suit. However, the compensation so deposited should not be determined by applying the parameters laid down in **Atma Ram Properties** (supra). In the instant case, this Court is dealing with a situation where the Plaintiff has succeeded in the suit for eviction of gratuitous licensee. The suit for eviction is summary in nature while the suit for declaration of title filed by Defendant No. 1 is pending consideration.

24. Clause 1 of Order 41 Rule 5 indicates that a stay may be granted for

sufficient cause. The Appellate Bench of the Small Causes Court, *prima facie*, found that the appeal was pending for consideration, and that the right of appeal is a statutory right, and that the dispossession of the Petitioners would cause serious prejudice to their rights and thus the Appellate Court found that the substantial loss would be caused to the Petitioner in the event of stay not being granted.

25. The submission of the Petitioner before the Appellate Bench was that he is the owner of the suit premises and not a gratuitous licensee of the Plaintiff. It was contended that the Petitioners were not in need of the suit premises and had no genuine requirement to use the same for their residence. It was further submitted that the Petitioners could not be expected to reside in the suit premises at the mercy of the Plaintiff, who is the younger brother of Petitioner no. 1.

26. The Small Causes Court while granting eviction from licensed premises does not, in fact, determine the title to the property. The Small Causes Court has proceeded on the basis that the suit property stands in the name of the Plaintiff, and, on that basis, it has held the Defendant to be a gratuitous licensee of the Plaintiff. The enquiry before the Small Causes Court is limited to that extent. Consequently, the direction to vacate the suit premises has been issued on the basis of such finding.

27. In the instant case, being a family matter, and the Petitioner being the elder brother of the Plaintiff, it would be necessary to impose appropriate conditions while granting the stay, particularly when a serious challenge to the title of the suit premises is pending consideration before the Civil Court. In this regard, it would be apposite to refer to the judgments of this Court and the Supreme Court on the issue, including the various judgments cited by the parties.

28. In **Atma Ram Properties** (supra) the Supreme Court considered the provisions of Order XLI Rule 5(3) of the Code of Civil Procedure, 1908. The Court held that dispossession, during the pendency of an appeal, of a party who is in possession would generally constitute substantial loss to the party seeking stay within the meaning of Order XLI Rule 5(3) CPC.

29. In **Atma Ram Properties** (supra), the Court was considering a case concerning a licensee protected under the Delhi Rent Control Act, where an order of eviction had been passed against the tenant on the ground of subletting the premises. In the appeal, the question before the Court concerned the conditions that could be imposed while granting stay under Order XLI Rule 5 CPC.

30. The Supreme Court held that the power to grant stay is discretionary and flows from the jurisdiction conferred upon the Appellate Court. Such

jurisdiction is equitable in nature, and the Appellate Court is not ordinarily required to grant an order of stay merely because an appeal has been preferred and an application for stay has been made.

31. An applicant seeking an order of stay must do equity while seeking equity. Depending upon the facts and circumstances of each case, the Appellate Court, while granting an order of stay, may impose such terms and conditions as would ensure that the ends of justice are met and that the interests of the party ultimately found to be successful in the appeal are adequately protected.

32. The Supreme Court in **Atma Ram Properties** (supra) also relied upon the judgment of **Southern Eastern Coalfields Ltd. Vs. State of Madhya Pradesh**¹⁰, wherein the Court held that where the orders passed at an interim stage are reversed and in the event of the final decision going against the party successful in securing the interim order in its favour, the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been had the interim order not been passed against it. The Court thus opined that, while granting an order of stay under Order 41, Rule 5 CPC, the Appellate Court does have jurisdiction to put the party seeking the stay order on such terms as would reasonably compensate the party successful at the end of the appeal, insofar

¹⁰ (2003) 8 SCC 648

as those proceedings are concerned.

The Supreme Court in **Atma Ram Properties** (supra) at paragraphs 11 and 18 has held as under :

“11. Under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. In the case of Chander Kali Bai³ the tenancy premises were situated in the State of Madhya Pradesh and the provisions of the M.P. Accommodation Control Act, 1961 applied. The suit for eviction was filed on 8-3-1973 after serving a notice on the tenant terminating the contractual tenancy w.e.f. 31-12-1972. The suit came to be dismissed by the trial court but decreed in first appeal decided on 11-8-1975. One of the submissions made in this Court on behalf of the appellant tenant was that no damages from the date of termination of the contractual tenancy could be awarded; the damages could be awarded only from the date when an eviction decree was passed. This Court took into consideration the definition of tenant as contained in Section 2(i) of the M.P. Act which included "any person continuing in possession after the termination of his tenancy" but did not include "any person against whom any order or decree for eviction has been made". The Court, persuaded by the said definition, held that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the M.P. Act and on such termination his possession does not become wrongful until and unless a decree for eviction is passed. **However, the Court specifically ruled that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion the Court held the tenant was not liable to pay any damages or mesne profits for the period commencing from 1-1-1973 and ending on 10-8-1975 but he remained liable to pay damages or mesne profits from 11-8-1975 until the delivery of the vacant possession of the accommodation.** During the course of its decision this Court referred to a decision of the Madhya Pradesh High Court in Kikabhai Abdul Hussain v. Kamlakars wherein the High Court had held that if a person

continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. This Court opined that what was held by the Madhya Pradesh High Court seemed to be a theory akin to the theory of "relation back" on the reasoning that on the passing of a decree for eviction, the tenant's possession would become unlawful not from the date of the decree but from the date of the termination of the contractual tenancy itself. It is noteworthy that this Court has not disapproved the decision of the Madhya Pradesh High Court in Kikabhai Abdul Hussain cases but distinguished it by observing that the law laid down in Kikabhai Abdul Hussain cases was not applicable to the case before it in view of the definition of "tenant" as contained in the M.P. Act and the provisions which came up for consideration of the High Court in Kikabhai Abdul Hussain cases were different."

18. That apart, it is to be noted that the appellate court while exercising jurisdiction under **Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for evict must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd.**⁹ this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so **that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property**".

33. The Supreme Court in the case of **Atma Ram Properties** (supra) held that if the tenancy is governed only by the provisions of the Transfer of Property Act, 1882, once the tenancy comes to an end by determination of the lease under Section 111 of the Transfer of Property Act, the tenant's right

to continue in possession of the premises comes to an end, and for any period thereafter during which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises upon being vacated by the tenant.

34. The Court also held that the tenancy protected under the Rent Control Act comes to an end on the date of the decree of the trial Court. However, if the tenant continues in possession even after the passing of the decree, he becomes a wrongful occupant of the accommodation and becomes liable to pay mesne profits from the date of the decree until he delivers vacant possession.

35. It is pertinent to note that **Atma Ram Properties** (supra) concerned a case involving a tenant and not a gratuitous licensee.

36. Coming to the next judgment of the Supreme Court in the case of **State Vs. Supermax (Supra)**, the Supreme Court considered a case of a tenant protected under the Rent Control Act, where eviction was directed under one of the provisions of the Rent Control Act. In **Supermax** (supra), the Court noticed that the Appellate Court, while granting a stay, passed interim orders fixing the rent, which was very excessive. The Supreme Court held, in paragraphs 76 and 77, as under:

“ 76. The Court answered the first issue as follows: (Atma Ram Properties case, SCC pp. 716-17, para 16)

"16. We are, therefore, of the opinion 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. 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."

The second issue was answered as follows: (Atma Ram Properties case, a SCC p. 718, para 19)

"(2) With effect from that date [the passing of the decree of eviction], the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree." (words in parenthesis added) (emphasis supplied)

We are in respectful agreement with the decision of the Court in Atma Ram Properties :

77. In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act it is open to the appellate or the Revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless

to say that in fixing the amount subject to payment of which the execution of the order/decreed is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.”

37. In **Safset Vs. Riddhi** (supra), this Court considered a case with respect to a leave and license agreement, wherein this Court relied upon the judgment in **Atma Ram Properties** (supra), directing interim compensation at the market rate from the date of termination of the license. However, in the instant case, we are dealing with slightly different facts. The case before me is not one of a tenancy protected under the Rent Control Act, or of a licensee under a leave and license agreement. The instant case relates to a category of family dispute where the younger brother has claimed that the elder brother is his gratuitous licensee in respect of the suit premises, situated in a building where the elder brother and his family also have other flat premises in the same building. The suit flat stands in the name of the Plaintiff, but there is a suit for declaration of title filed by Defendant No.1 claiming ownership of the suit flat, contending therein that the flat was purchased in the name of his younger brother/Plaintiff, as the society was not granting him permission to purchase another flat in the same building. Since the matter pertains to a gratuitous licensee, more particularly in the context of a family dispute, and the determination of title is also substantially in issue in the suit filed by Defendant No.1, the parameters for computing

compensation as laid down in **Atma Ram Properties** (supra) in the leave and license cases or Rent Act cases may not strictly apply. However, **Atma Ram Properties** (supra) also holds that the Appellate Court, while granting an order of stay, may impose such terms and conditions as may meet the ends of justice and protect the interests of the party ultimately found to be successful in the appeal.

38. The Trial Court has decreed the eviction suit on the basis of the Plaintiff's ownership certificate as the suit property stands in the name of the Plaintiff. The Small Causes Court does not adjudicate upon the issue of title, and has proceeded on the basis of ownership, having regard to the limited scope of enquiry before it.

39. The Petitioner had not placed any valuation before the Appellate Court. However, the Plaintiff had produced a report prepared by Architects, assessing the market rent of the suit premises at Rs.6,65,200/- per month with effect from November 2024. Nevertheless, the Appellate Court has granted Rs.3,00,000/- per month as interim compensation. In the circumstances, the said amount does not warrant interference.

40. The Supreme Court has held that, while granting a stay of an eviction decree under Order 41, Rule-5, the Appellate Court is required to balance the equities between the parties. In the facts and circumstances of the present

case, this Court is of the view that the Petitioner be directed to pay a sum of Rs. 3,00,000/- per month to the Plaintiff with effect from the date of the decree of the trial Court, so as to avoid the imposition of extremely onerous conditions of deposit from the date of the suit, more particularly when the suit for declaration of ownership is pending consideration before the Civil Court. The amount directed by the Appellate Court to be paid from the date of the suit until the date of the decree, can secure by an undertaking to be given by the Petitioners.

41. Accordingly, the compensation of Rs.3,00,000/- per month, as directed, shall be deposited in the Court with effect from the date of the decree, i.e. 26th November 2024. The Plaintiff shall be permitted to withdraw the said compensation upon furnishing an undertaking to the satisfaction of the Court.

42. This Court has thus attempted to balance the equities by permitting the Plaintiff to withdraw the amount subject to an undertaking.

43. With the above observations, the impugned order stands modified.

44. Accordingly, the Writ Petition is disposed of with following directions. The directions/conditions impugned in the impugned order passed on Exhibit-10 stands modified, as under :-

- (i) The applicant shall deposit Rs.3,00,000/- per month as interim compensation from the date of decree i.e. 26th November 2024, within a period of two months.
- (ii) The Petitioner shall also continue to deposit monthly compensation at the same rate on or before 10th day of each succeeding month till the final disposal of the Appeal.
- (iii) If an application is made by the Defendant to withdraw this amount, the same shall be permitted on an undertaking and the Petitioner shall not create any third party interest in the suit premises.
- (iv) The Petitioners to give an undertaking that in the event the Petitioner fails in the Appeal, he would deposit the compensation @ Rs.3,00,000/- per month from the date of Suit till the date of decree within 8 (eight) weeks before the Appellate Bench of Small Causes Court. Undertaking to be filed in this Court.

45. Any observations made in this order are *prima facie* in nature, are confined solely to the adjudication of the present Petition, and shall have no bearing whatsoever on the title suits pending between the parties or on any application pending in the present matter.

BHALCHANDRA
GOPAL
DUSANE

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[ARUN R. PEDNEKER, J.]