IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11194 OF 2026

JM Financial Asset Reconstruction
Company Ltd.
Acting in its capacity as trustee of
JMFARC BOI 2009 Trust
Having its registered office at
7th Floor, Cnergy, Appasaheb Marathe
Marg, Prabhadevi, Mumbai – 400 025
and corporate office at
Office No.22, Lloyds Centre Point,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai – 400 025. ...Petitioner

Versus

1. Mumbai Port Authority
(formerly the Board of Trustees
of the Port of Mumbai),
a statutory corporation
constituted under Section 3 of the
Major Port Authorities Act, 2021,
having its registered office at
Vijaydeep Building, Shoorji
Vallabhdas Marg, Fort,
Mumbai - 400001.

2. The Estate Officer, Mumbai
Port Authority, an officer
appointed under Section 3 of the
Public Premises (Eviction of
Unauthorized Occupants) Act,
1971, having his office at Estate
Division, 3rd Floor, Vijaydeep
Building, Shoorji Vallabhdas
Marg, Fort, Mumbai – 400001.

3. Shubh Hospitality Pvt. Ltd.,
a private ltd. company having
its registered office at 30,

P. J. Ramchandani Marg,
Opposite Radio Club, Colaba,
Mumbai – 400 005.
And
Flat No.2001, Bulding No.116,
Sayba Elegant, Nehru Nagar,
Near Nehru Nagar Police Station,
Mumbai – 400024.

4. Bank of India,
Corporate Banking Branch,
4th floor, 70/80 M. G. Road,
Mumbai – 400023. ...Respondents

Mr. Ashish Kamat, Senior Advocate, Ms. Huzan Bhumgara, Mr. Areez Gazdar, Mr. Dhruv Dandekar, Ms. Letishiya Chaturvedi i/b Veritas Legal, for the Petitioner.

Mr. Girish Godbole, Senior Advocate, Mr. Mandar Bangale, Ms. Sarita Yadav, Ms. Pearl Pais, i/b Bangale & Associates, for the Respondent No.1.

Mr. Vividh Tandon, i/b Mr. Mehul Thakkar, for Respondent No.3.

Mr. Ojas Gole, for Respondent No.4 – Bank of India.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 31st AUGUST 2026
PRONOUNCED ON : 10th SEPTEMBER 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and with the consent of learned Counsel for the parties, heard finally.

2. By this petition, the petitioner takes exception to an order dated 02nd July, 2026, passed by the Principal Judge, City Civil Court, Mumbai in Miscellaneous Appeal No. 0100286/2026, whereby while granting stay to the execution and operation of the order passed by the Estate Officer (R-2) in case No. EO/E/(135)(135-A)(135-B)/2013 under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ("PP Act, 1971"), the learned Principal Judge, City Civil Court, directed the petitioner – appellant to deposit 20% of the amount ordered to be paid by the Estate Officer (R-2) by way of compensation for unlawful occupation of the inquiry premises.

3. Shorn of superfluities, the background facts necessary for the determination of this petition, can be stated as under :-

3.1 The Petitioner is an Asset Reconstruction Company registered with the Reserve Bank of India under Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act, 2002").

3.2 The Respondent No.1 is a Port Authority constituted under Section 3 of the Major Port Authorities Act, 2021 ("Port Act, 2021"). The Respondent No.1 is the owner of the land admeasuring 1,036.71 sq. mtrs. bearing C.S. No.10/384 of Colaba Division, together with all buildings standing thereon ("inquiry premises").

3.3 The Respondent No.3 is a Private Ltd. Company registered under the Companies Act, 1956. The Respondent No.3 was assigned leasehold rights in the inquiry premises by the Respondent No.1 under a letter dated 04th September, 2006. The Respondent No.3 obtained credit facilities from Respondent No. 4 – Bank against the mortgage of the leasehold rights in the inquiry premises.

3.4 On 18th August, 2009, the petitioner acquired the said debt together with security interest in the inquiry premises from Respondent No.4 – Bank, under an assignment agreement and a subsequent deed of rectification dated 02nd December, 2012. The petitioner claimed to have obtained the possession of the inquiry premises on 06th August, 2012 by following the procedure prescribed under SARFAESI Act, 2002.

3.5 On 13th February, 2013, the Respondent No.1 instituted an Eviction Petition before the Estate Officer (R-2). The Respondent No.1, *inter alia*, sought an amount of Rs. 8,07,02,917.27/- (Rupees Eight Crores Seven Lakhs Two

Thousand Nine Hundred Seventeen and Twenty Seven Paise) towards arrears of rent/compensation and service tax.

3.6 During the pendency of the said eviction proceeding, the Respondent No.1 purportedly introduced a new Scale of Rates (SORs) of rent for the period 01st October, 2012 to 30th September, 2017; 01st October, 2017 to 30th September, 2022 and for the period 01st October, 2022 to 30th September, 2027. Thereupon, an amendment was sought in the Eviction Petition seeking enhanced arrears of rent/compensation.

3.7 Eventually, by an order dated 09th June, 2026, the Respondent No.2 passed an order for eviction of the Respondent No.3, Respondent No.4 and the petitioner from the inquiry premises under the provisions of Section 5(1) of the PP Act, 1971. The Respondent No.2 also assessed the damages on account of unauthorized occupation of the inquiry premises and directed the respondents in the said proceedings/petitioner and Respondent Nos.3 and 4 herein, to pay an amount of Rs.275,78,61,569/- (Rupees Two Hundred Seventy Five Crores Seventy Eight Lakhs Sixty One Thousand Five Hundred and Sixty Nine) by invoking the powers contained in Section 7(1)(2)(2A) of the PP Act, 1971.

3.8 Being aggrieved, the petitioner preferred an appeal before the learned Principal Judge, City Civil Court, Mumbai. In the said appeal, the petitioner filed an application for stay to the execution and operation of the order passed by the Estate Officer (R-2). The learned Principal Judge, City Civil Court after taking into account the fact that, the petitioner has been in the occupation of the inquiry premises since more than 13 years and *prima facie* there was nothing to show that, the petitioner was entitled to occupy the inquiry premises without payment of any charges, granted stay to the execution and operation of the order passed by the Estate Officer subject to deposit of 20% of the amount of compensation granted by the Estate Officer (R-2) within a period of 8 weeks.

3.9 Being aggrieved by the imposition of the condition to deposit 20% of the compensation awarded by the Estate Officer which comes to Rs.55,15,72,313/- (Rupees Fifty Five Crores Fifteen Lakhs Seventy Two Thousand Three Hundred and Thirteen), the petitioner has invoked the writ jurisdiction of this Court.

4. I have heard Mr. Ashish Kamat, the learned Senior Advocate for the petitioner, and Mr. Girish Godbole, the learned

Senior Advocate for the Respondent No.1, at some length. The learned Counsel for the parties took the Court through the pleadings and the material on record including the various orders passed by the Authorities under the SARFAESI Act, 2002 and this Court in writ petitions preferred by the parties.

5. Mr. Ashish Kamat, the learned Senior Advocate for the petitioner, submitted that, the impugned order suffers from the vice of non-consideration of any of the grounds urged by the petitioner while seeking stay to the execution and operation of the order passed by the Estate Officer (R-2). The impugned order, Mr. Kamat would urge, borders on an order sans reasons and betrays non-application of mind. Secondly, the learned Principal Judge did not properly appreciate the fact that there was a complete failure of justice as the Estate Officer (R-2) passed the final order without providing an effective opportunity of hearing. The order passed by the Estate Officer, thus suffers from patent legal infirmity on account of breach of the principles of natural justice and fundamental principles of judicial process. Thirdly and most importantly, the very substratum of the determination of compensation by the Estate Officer (R-2) was dismantled with the Division Bench judgment of this Court in the case of ***Arsheesh Jamshed Wadia & anr. vs.***

The Board of Mumbai Port Authority & ors.[1], delivered on 25th August, 2026 as the new Scale of Rates (SORs) were quashed and set aside by the Division Bench. Although the Division Bench judgment was delivered subsequent to the passing of the impugned order by the learned Principal Judge, yet, the orders passed by both the Estate Officers and the learned Principal Judge are rendered untenable as the principle of consequential orders applies.

6. Mr. Kamat, took the Court through the history of the proceedings in the matter of the determination of rent by the Respondent No.1 and the decisions of this Court as well as the Supreme Court holding that, the Respondent No.1 cannot resort to profiteering like a private landlord.

7. Fourthly, Mr. Kamat would submit, the petitioner being a secured creditor, it could not have been saddled with the liability to pay the rent and/or compensation at all or at least for the period prior to the date, the petitioner came into possession of the inquiry premises.

8. Lastly, Mr. Kamat would urge, the direction to deposit 20% of an exorbitant and fanciful compensation determined by

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1 WP(O)/3143/2022

the Estate Officer (R-2) is wholly onerous and unreasonable. Such a condition frustrates the statutory right of appeal, submitted Mr. Kamat.

9. To lend support to his submission that, it is not peremptory that in every case where stay is granted to the execution of a money decree, the condition of deposit be imposed, Mr. Kamat placed reliance on the judgment of the Supreme Court in the case of ***Lifestyle Equities C. V. & anr. Vs. Amazon Technologies INC.***[2]

10. Per contra, Mr. Girish Godbole, the learned Senior Advocate for the Respondent No.1, submitted that, in the peculiar facts of the case, the direction to deposit 20% of the compensation ordered to be paid by the Estate Officer (R-2) cannot be said to be unreasonable. Laying emphasis on the fact that, the petitioner has not paid any amount towards the rent/charges for the occupation of the inquiry premises, for over 14 years, Mr. Godbole submitted that, it is not open for the petitioner to urge that, being a secured creditor, the petitioner cannot be directed to pay the rent/occupation charges. Mr. Godbole submitted with a degree of vehemence that, the

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2 (2026) 3 SCC 641

petitioner went ahead with the acquisition of the debt and the purported security interest in the inquiry premises despite a clear and categorical condition in the letter of assignment of leasehold rights that, the Respondent No.3 was not entitled to mortgage the leasehold rights in the inquiry premises, without prior written permission of the Respondent No.1.

11. Mr. Godbole, further urged that, in WP/502/2013, the petitioner was put to notice that the Respondent No.1 had the claims against the Respondent No.3. Thus, while disposing of the said writ petition, the petitioner and Respondent No.4 – Bank were directed to bring the notice of the prospective auction purchaser of the property, the Respondent No.1's claims in respect thereof, the said writ petition, the order passed therein and the proceedings under PP Act, 1971 pending before the Estate officer (R-2). Yet the petitioner brazenly continued to occupy the inquiry premises without paying any rent/occupation charges in clear breach of the terms subject to which the leasehold rights in inquiry premises were assigned to the Respondent No.3. Thus, there are no equities in favour of the petitioner.

12. Mr. Godbole further submitted that, the Division Bench judgment of this Court in the case of ***Arsheesh Jamshed Wadia (supra)***, does not govern the assignment of the leasehold rights in the inquiry premises, under the letter dated 04th September, 2006. The petitioner having acquired the purported security interest in the inquiry premises with open eyes, cannot be permitted to wriggle out of the liability to pay the rent/occupation charges in accordance with the terms of the contract.

13. I have given anxious consideration to the submissions canvassed across the bar.

14. At the outset, it is necessary to note that the instant petition assails a discretionary order granting stay to the execution and operation of the eviction order passed by the Estate Officer (R-2), during the pendency of the appeal thereagainst. All the issues in regard to the legality, propriety and correctness of the order passed by the Estate Officer (R-2), impugned in the said appeal, are to be adjudicated by the Appellate Authority. It would, therefore, be inadvisable to trench upon the merits of the challenges to the order passed by the Estate Officer (R-2), impugned before the Appellate

Authority, as there is a clear risk of pre-judging the matter before a decision is rendered by the Appellate Authority. Therefore, this Court considers it expedient to confine consideration in this petition to the justifiability of the direction to deposit of 20% of the compensation amount ordered to be paid by the Estate officer (R-2) as a condition for the stay to the execution and operation of the order passed by the Estate Officer (R-2).

15. First and foremost, the nature of the order impugned before the Appellate Authority deserves to be noted. By the said order, the Estate Officer has directed the eviction of the Petitioner and Respondent Nos.3 and 4 invoking the power under Section 5(1) of the PP Act, 1971. The Estate Officer has assessed the damages in respect of the unauthorized occupation of the inquiry premises and directed payment of damages along with interest aggregating to Rs.275,78,61,569/- under Section 7 of the PP Act, 1971.

16. The assessment of damages is at the heart of the controversy. It is the case of the Petitioner that the damages have been assessed taking into account the revised SORs which have been quashed and set aside by the Division Bench in the case of ***Arsheesh Jamshed Wadia (supra).***

17. Before adverting to this contentious issue, it may be apposite to note the initial terms of the assignment of leasehold rights by Respondent No.1 in favour of Respondent No.3. Under the letter dated 4 September 2006, the leasehold rights were assigned in favour of Respondent No.3 for the residual period of lease, expiring on 7 August 1932. The agreed rent was Rs.6,64,147.53 p.m. with a stipulation for increase in rent by 4% p.a. The rent was to be subject to the decision of the Board on the approach paper to deal with the gray areas in the implementation of the Supreme Court judgment. Clause 20 of the said letter provided for levy of interest @ 18% p.a., or at such rate as may be revised by the Board of Trustees, on late payment of monthly rent / compensation.

18. Evidently, the terms of assignment of leasehold rights as to the term of assignment and the rent payable, were explicitly clear. The submission of Mr. Kamat was that the caveat in clause 3 of the said letter made it clear that, the Respondent No.1 was also cognizant of the fact that the rent agreed to be paid was subject to the implementation of the Supreme Court judgment in regard to the charge of rent by Respondent No.1. Thus, the decision in the case of ***Arsheesh Jamshed Wadia (supra)***, governs the initial fixation of rent for the inquiry premises.

19. With this clarity on facts and the contours of dispute, it is imperative to note that, the directions for deposit of rent even at a rate higher than the contractual rate, as a condition for the grant of stay to the execution and operation of decree for eviction is a well recognized measure to balance equities, where the possession of the person seeking protection from eviction is declared to be unlawful and unauthorized.

20. In the case of ***Atma Ram Properties (P) Ltd. V/s. Federal Motors (P) Ltd.***[3], on which reliance was placed by Mr. Godbole, the Supreme Court, inter alia, enunciated that, while exercising the jurisdiction under Order 41 Rule 5 of the Code of Civil Procedure, 1908, the Appellate Court has the power to put the tenant-appellant on terms. Though the right to file an appeal against the order of eviction is statutory, yet, the prayer for grant of stay to the execution of the eviction decree is required to be dealt with in exercise of equitable discretionary

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3(2005) 1 SCC 705

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 tenant-appellant 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. However, such terms shall be reasonable.

21. In the said case, the Supreme Court has culled out the propositions, as under :

> "19. To sum up, our conclusions are:-
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> (1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;
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> (2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (l) of

Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, 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.....”

22. A three-Judge Bench of the Supreme Court in the case of ***State of Maharashtra and Anr. V/s. M/s. Super Max International Pvt. Ltd. and Ors.***[4], affirmed the aforesaid conclusions in the case of ***Atma Ram Properties (P) Ltd. (supra).*** The Supreme Court further clarified the position, as under :

“46. In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a 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

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

23. These decisions were followed by the Supreme Court in the case of ***Sumer Corporation V/s. Vijay Anant Gangan***[5].

24. This Court is conscious of the fact that the aforesaid decisions have been rendered in a situation where the possession of the tenant was declared to have become unlawful from the date of the passing of the decree of eviction. However, the propositions that, the person who seeks stay to the execution of the decree for eviction is liable to pay the rent / compensation for the unlawful occupation of the subject premises and while fixing the amount of compensation for the unlawful occupation to be paid as a condition for the stay to the execution of the order/decree, the Appellate Court should exercise restraint and would not fix excessive, fanciful or punitive amount, apply with equal force in a situation of the present nature. Lest, the statutory right of appeal would be rendered illusory.

5AIR 2022 SC 5756

25. In the case at hand, it is pertinent to note, it is nowhere the claim of the Petitioner that, it has paid any rent or occupation charges since the date it entered into the possession of the inquiry premises. The fact remains that since 6 August 2012, the Petitioner has been in the occupation of the inquiry premises without payment of any rent / charges whatsoever. The liability to pay arrears of rent in accordance with the contractual obligations of Respondent No.3 – debtor, before the Petitioner obtained the possession of the inquiry premises in the capacity of the secured creditor may be debated. Whether the Petitioner is liable to pay those arrears of rent and charges, etc., can be said to be a matter to be decided by the Appellate Authority in the pending appeal. However, the Petitioner can hardly dispute the liability to pay the rent / charges for the occupation of the inquiry premises at least since the date it came in possession thereof.

26. It cannot be ignored that, what was acquired by the Petitioner was the security interest in the nature of leasehold rights in the inquiry premises. Thus, the Respondent No.1 can under no circumstances be deprived of the right to recover the rent / occupation charges in respect of the inquiry premises, of which the Respondent No.1 is indubitably the owner.

27. At this stage, it is necessary to note that, initially the claim of the Respondent No.1 before the Estate Officer was confined to the arrears of rent / charges for the period 4 December 2006 to 30 September 2012, aggregating to Rs.8,07,02,917.27/-. Incontrovertibly, during the pendency of the eviction proceedings, Respondent No.1 amended the claim so as to recover the arrears of rent / charges as per the revised scale of rates.

28. In this proceeding, having regard to the limited nature of the controversy, this Court is not inclined to delve deep into the implications of the judgment of the Division Bench in the case of ***Arsheesh Jamshed Wadia (supra)***, on the claim of Respondent No.1 for the arrears of rent / charges as the appeal before the Appellate Authority is yet to be heard. Suffice to note that, the Division Bench quashed and set aside the Notification dated 29 October 2021 fixing the scale of rates for the period 1 October 2012 to 30 September 2017 and the Notification dated 18 December 2021 fixing the scale of rates from 1 February 2017 to 30 September 2022 as those Notifications overreached the compromise proposals and the decision of the Supreme

Court and also on the ground that the scale of rates were revised with retrospective effect.

29. *Prima facie*, this Court finds substance in the submission of Mr. Kamat that the determination of the damages by the Estate Officer (R2) draws support and sustenance from the revised scale of rates, which the Division Bench has quashed and set aside. Therefore, the direction for the deposit of the amount equivalent to 20% of the compensation awarded by the Estate Officer (R2) as a condition for stay to the execution and operation of the order passed by the Estate Officer (R2), as a measure of balancing equities, may not be sustainable as the edifice of the determination of the compensation becomes tenuous.

30. Conversely, this Court is not inclined to accede to the submission on behalf of the Petitioner that the Petitioner does not bear any liability to pay rent/occupation charges. Incontrovertibly, the Petitioner is in the occupation fo the inquiry premises since 6 August 2012. In the least, the Petitioner would be required to pay rent/charges for the occupation of the inquiry premises at the contractual rate with an increase of 4% p.a.

31. Whether the very fixation of the contractual rate of rent is affected by the Division Bench decision in the case of ***Arsheesh Jamshed Wadia (supra)***, is a matter which may be required to be adjudicated upon by the Appellate Authority. It would be inadvisable for this Court to embark upon an inquiry on this aspect while the appeal awaits adjudication.

32. Nonetheless, even on conservative basis, in the considered view of this Court, the Petitioner cannot escape the liability to pay rent/occupation charges at the contractual rate from 6 August 2012, subject to the final order that may be passed by the Appellate Authority.

33. For the foregoing reasons, this Court is inclined to interfere with the impugned order and modify the quantum of the amount to be deposited by the Petitioner as a condition for grant of stay to the execution and operation of the order passed by the Estate Officer (R2). A condition to deposit the amount equivalent to the rent fixed and payable under the letter dated 4 September 2006 by which leasehold rights were assigned to Respondent No.3, from the date the petitioner has been in the occupation of the inquiry premises upto this month, but without interest, would balance the equities between the parties.

34. Hence, the following order :-

: : O R D E R : :

(i) The Writ Petition stands party allowed.

(ii) The impugned order stands modified as under:

(a) The effect, operation and execution of the order passed by the Estate Officer (R2) in Case No. EO/E/(135)(135-A)(135-B)/2013 shall remain stayed until further orders by the Appellate Authority subject to the Petitioner-Appellant depositing an amount towards compensation at the rate of rent fixed under the letter dated 04th September, 2006, as it obtained on 6th August 2012, alongwith 4% annual increase in the rent, from 6th August 2012 till 5th September 2026 (i.e. for 14 years and one month) in the Court of learned Principal Judge, City Civil Court, Mumbai, within a period of four weeks from today.

(b) It is clarified that the observations were confined to determine the justifiability of condition to deposit the amount and the learned Principal Judge, City Civil Court shall decide the Appeal on its own merits and in accordance with law without being influenced by any of the observations in the impugned order.

(c) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]