

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 618 OF 2013**

IN

CIVIL REVISION APPLICATION NO. 256 OF 2013

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr.G.S.Godbole i/b Mr Rahul C.Mestry,
Advocate for the Applicant.

Ms Trupti J. Gohli, Advocate for the
Respondent.

CORAM: R.G.KETKAR, J.

DATE : 24/12/2013

PC:

1. Heard Mr. G.S.Godbole, learned counsel for the applicant and Ms. Trupti J.Gohli, learned counsel for the respondent at length.

2. By this application, the applicant has prayed for issuing directions to the respondent to hand over quiet, vacant and peaceful possession of the garage which forms part of the suit premises, ie flat no.15, to the applicant, among other prayers.

3. Mr. Godbole invited my attention to

various rent receipts that have been annexed along with the application and submitted that along with flat no.15, garage was also let out to the original tenant-Mr S.M.Haskel. He invited my attention to copy of the Plaint in R.A.E.Suit No.1259/1895 of 2006 as also the Judgment and decree passed by the Courts below. Mr Godbole also invited my attention to the Consent Terms entered into between the parties on 10.5.2013 and the order passed by this Court on 10.5.2013 disposing of Civil Revision Application No.256 of 2013 in terms of the Consent Terms. This Court also accepted the respective undertakings given by the respective parties.

4. Mr.Godbole submitted that flat no.15 was let out to the original tenant Mr S.M.Haskell along with garage and it is a composite tenancy. He, therefore, submitted that the application may be allowed in terms of prayer clause (a).

5. As against this, Ms. Gohil strenuously contended that garage was not subject matter of the suit instituted by the applicant. She also invited my attention to various rent receipts in support of her submission. She submitted that in the affidavit, the respondent has stated that he has already handed over possession of garage to Mr Nikhil Nayar, one of the Co-owners. She submitted that the submission of the applicant that it is the case of composite tenancy, is incorrect. It is the case of the respondent that the tenancy is distinct and separate qua flat no.15 as also garage. She invited my attention to the description of the suit premises in the Complaint as also decree passed by the Courts below. In short, her submission is that the subject matter of the Civil Revision Application was flat no.15 and not the garage.

6. In my opinion, this question cannot be agitated in this application. The applicant is seeking execution of the

Consent Terms. In view thereof, it is open to the applicant to file execution proceedings and raise all contentions including that the tenancy in respect of the flat and garage was composite. It is also necessary for the parties to lead evidence on that point. Mr. Godbole, upon taking instruction from the applicant-Brijbehari Nayar who is personally present in the Court as also from his daughter-Ms Shalene who is present in the Court and from the Constituted Attorney Mr Satish Kumar Sareen, states that he will withdraw this application with liberty to take out execution proceedings before the appropriate Court.

7. In view thereof, this Application is allowed to be withdrawn with liberty as prayed.

It is expressly made clear that this Court has not made any observation as regard the merits of the controversy in question. The respondent would be at

liberty to raise all objections and contentions that are available including that the garage is not subject matter of the execution proceedings as also tenancy in respect of the flat and the garage was distinct and separate. If such execution proceedings are filed, the executing Court will consider expeditious disposal of those proceedings having regard to the age of the applicant which is stated to be 86 years old.

(R.G.KETKAR, J.)