

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1085 OF 2015
WITH
CIVIL APPLICATION NO.1332 OF 2015**

Rahul Shyamkant Gade and Anr.

.. Appellants
(Orgn. Defendants).

Versus

Bapu Babaji Shelke

..Respondent.
(Orgn. Plaintiff)

.....

Mr. Prabhakar Jadhav i/b Mr. Vishal Kolekar for the Appellants.
Mr. Santosh G. Shirsat for the Respondent .

**CORAM: MRS. MRIDULA BHATKAR, J.
DATED: 6th OCTOBER, 2015.**

P. C. :

. This appeal from order is filed against the order dated 3/3/2015 passed by the District Judge-I, Kalyan thereby rejecting application at Exh.5 seeking stay of the order.

2. In the application for stay of Recovery Proceeding under Order 41 Rule 5 r/w. 151 of CPC, the appellant is a judgment debtor and the respondent is the plaintiff in Special Suit No.276/2012. The plaintiff had purchased the suit flat No.301, Wing-B-2, 3rd floor, Manav Park, Phase-II, Cooperative Housing Society Ltd., Ramesh wadi, Church Road, Kulgoan, Badlapur(W), Taluka-Ambernath, Dist. Thane,

admeasuring 540 sq. ft. in the year 1999. The appellants-defendants are the neighbours of the plaintiff who are staying in Flat No.302 in the same building. In the year 2009 the defendants expressed their desire to purchase the flat for full and final consideration of Rs.6 lakhs and the same was agreed before the Secretary of the Society. The appellants i.e. the defendants executed an undertaking dated 6/9/2009 in favour of the plaintiff that he shall pay full and final consideration within a month. Thereafter, the defendants occupied the suit flat and since then though the plaintiff made number of demands for the consideration, they did not pay anything but occupied the suit premises. The plaintiff was therefore constrained to file the suit for possession and declaration that he is the absolute owner of the suit flat and also for declaration of cancellation of the agreement dated 11/9/2015 between the plaintiff and the defendants in respect of the suit flat. The suit was decreed on 17/4/2014 by the 2nd Joint Civil Judge, S. D., Kalyan. In the said suit though defendants appeared, they did not file written statement. No written statement order was passed on 6/12/2012. The said order was never challenged by the defendants. The suit proceeded, however the defendants did not lead any oral evidence. The Trial Court, after considering the entire documentary evidence produced by both the parties, and considering the evidence of the plaintiff, decreed the suit

against which statutory First Appeal, Civil Application No.54/2015 and the application below Exh.5 was filed.

3. Generally, this is a suit for possession and the 1st defendant is in possession of the suit property since long. However, considering the facts of the case and that the suit flat was occupied by the appellants without paying any consideration for more than 3 years, the same is an action of grabbing of the suit premises without payment of any consideration amount. The District Court has rightly rejected the application for stay under Exhibit 5.

4. At the time of hearing of this appeal, the learned counsel for the appellants gave a suggestion that the appellants are ready to deposit an amount of Rs.4,50,000/- in the Trial Court and that the appeal may be heard expeditiously. He submitted that according to the defendants, the defendants have paid Rs.1,50,000/-. I am not inclined to accept this suggestion, the defendants ought to have given such suggestion either before the Trial Court or the Appellate Court and that could have been considered as bonafide of the appellants. However, the appellants, after losing in the Trial Court and also losing in the Appellate Court, cannot be given any protection. The District Court has

rightly rejected the application for stay. Accordingly, the petition is disposed of.

(MRS. MRIDULA BHATKAR, J.)