

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.1722/2015
IN
FIRST APPEAL NO.568/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S. G. Deshmukh i/b. Ramdas A. Shelke for the Applicant

Mr. Avinash V. Joshi for the Respondent No.1.

CORAM : K. K. TATED, J.

DATE : JULY 15, 2015

P.C.:

1. Heard. This Application is preferred by the Defendant for stay of the operation and implementation of the decree dated 09/03/2015 passed by the III Additional Judge, Small Causes Court and Jt. Civil Judge, Senior Division, Pune in Special Civil Suit No. 1491/2012 directing the Applicant to hand over vacant and peaceful possession of the suit plot No.36, admeasuring 100 sq.mtr. along with constructed house thereon consisting of ground + two floors, total admeasuring 95 sq.mtr. out of Sy.No.25/5A at Chandan Garden, Kondhwa Khurd, NIBM Road, Pune.

2. The learned counsel for the Applicant submits that as on today, they are in possession of the suit premises. He further submits that, if decree is not stayed, irreparable loss and injury will be caused to the Applicant. He submits that during pendency of the First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of the impugned decree dated 09/03/2015 passed in Special Civil Suit No. 1491/2012.

3. On the other hand, the learned counsel for the Respondent Plaintiff vehemently opposed the Civil Application. He submits that the Trial Court, in paragraph 18 of the impugned judgment specifically held that the Applicant Defendant shifted in the flat at Oxford Comfort on 26/07/2010. In the said paragraph, the Trial Court further observed that at the most, the Applicant Defendant started occupying suit premises after 07/06/2011. He further submits that as on today, the Trial Court specifically held that the Defendant Applicant is in possession of the suit premises as a trespasser. Hence, in the interest of justice, this Hon'ble Court be pleased to dismiss the present Civil Application for stay preferred by the Defendant. He submits that if stay is granted, the true owner will be deprived of the fruits of the decree.

4. Heard both sides at length. Admittedly, in the present proceedings, on the date of filing of the suit and till the impugned decree passed by the Trial Court, the Applicant was in possession of the suit premises. If stay is not granted, the Respondent Plaintiff may recover the possession of the suit property in Execution Application and in that case, nothing will survive in the present appeal.

5. At the most, the Respondent Plaintiff can be granted liberty to prefer an appropriate Application for monthly compensation, if they so desire, during pendency of the present appeal, which will be decided on its own merits.

6. Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application.

7. Hence, the following order:

a) Pending the hearing and final disposal of the First Appeal, clause (3) of the impugned decree dated 09/03/2015 passed by the Trial Court in

Special Civil Suit No. 1491/2013 is stayed. Clause (3), reads thus:

“(3) Defendant is hereby directed to hand over actual, physical and vacant possession of the suit property to the Plaintiff, within two months from today.”

b) The Applicant Defendant is restrained by an order of injunction from creating any third party right, title and interest in respect of the suit property till hearing and final disposal of the First Appeal.

c) Liberty granted to the Respondent Plaintiff to prefer an appropriate Application during pendency of the present appeal for monthly compensation, if they so desire, which will be decided on its own merits.

d) Civil Application stands disposed off accordingly.

JUDGE