

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.866 OF 2015

IN

APPEAL FROM ORDER NO.711 OF 2015

Mrs. Salma Aslam Memon	...	Appellant
Vs.		
Abdul Sattar Khalique Queshi & Ors.	...	Respondents

Mr. Imtiyaz Khairadi, Adv. i/b. Ms. S C Prabhu, Adv. for appellant.
A S Metar, Adv. for Respondent Nos.1 to 4.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 7th September, 2015.

P.C. :

1. Not on board. Upon production, taken on board.
2. Rule. Returnable forthwith.
3. The appellant has challenged the order of Bombay City Civil Court dated 30th March, 2015. The appellant and the respondent entered into leave and license agreement in May, 2005 for 11 months. It expired in April, 2006. Rs. 4 lacs were paid as security deposit. There has been a further license agreement and further deposit. Admittedly Rs.8 lacs were deposited in respect of the suit premises by the plaintiff.
4. Upon the termination of the license notice to quit was given. Eviction proceedings were taken out which were appealed. A Civil Revision Application was filed. Eviction has been ordered. As per the eviction order, upon the claim of the appellant that the license premises was agreed to be sold, Rs. 30 lacs was directed to be deposited and has been deposited.

5. Consequently for the suit premises Rs.38 lacs have been deposited in total by the appellant.

6. The appellant contends that the sale was to be for Rs.38 lacs.

7. The appellant has also claimed that certain cash payments were made which has not been accounted for. The cheque payments / deposits is to the extent of Rs.38 lacs. The respondent would be secured to that extent. Despite such security the learned Judge in the impugned order has considered the termination of the leave and license agreement since 2006 and the fact that the suit was filed much later in 2008. Despite considering that the appellant was in possession of the suit flat since 2005, the learned Judge has relied upon the fact of eviction proceedings against the appellant. However, since Rs.38 lacs have been deposited and the property to that extent is protected, the possession of the appellant also must similarly be protected pending the trial. The oral evidence with regard to all other aspects including payments in cash may be considered.

8. Consequently the impugned order is required to be set aside and is set aside. The respondents in the suit shall not disturb the possession of the appellant pending the suit.

9. Appeal from Order as also Civil Application are disposed of accordingly.

(ROSHAN DALVI, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.