

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.332 OF 2015
along with
CIVIL APPLICATION NO.790 OF 2015
in
SECOND APPEAL NO.332 OF 2015**

Somnath Abaji Pandhare .. Appellant
Vs.
Smt.Shilaja Govind Lohagaonkar .. Respondent

Mr.P.N. Joshi for the appellant.
Mr.Pradeep Dalvi for the respondent.

CORAM : R.D. DHANUKA, J.
DATE : 26th November 2015

P.C.

. By this second appeal, the appellant has impugned the order passed by the learned District Judge-7, Nashik dismissing the Civil Appeal No.71 of 2011 filed by the appellant who was the original defendant before the trial Court.

2. The respondent herein had filed a Special Civil Suit No.36 of 2006 in the Court of Civil Judge, Senior Division, Nashik against the appellant inter alia praying for a decree of possession in respect of the suit premises. It was the contention of the respondent (original plaintiff) that the appellant was the trespasser upon the suit premises.

3. The appellant herein also filed an application for fixation of standard rent before the concerned Court. The said application was rejected. The revision application against the said application was filed.

The said revision application was also rejected. The appellant did not file any substantive suit for declaration as a tenant. Learned trial Judge after considering the oral evidence led by the parties has rendered a finding of fact that the appellant was in the unauthorised occupation and has not been able to prove any alleged tenancy in respect of the suit premises.

4. Being aggrieved by the said order and decree passed by the trial Court, the appellant herein preferred an appeal. Learned District Judge after considering the oral evidence and the submissions made by both the parties has rendered a finding of fact that the appellant had failed to prove any rights in respect of the suit premises and that he was an unauthorised occupant.

5. On perusal of the orders and judgments delivered by the learned trial Judge and by the learned District Judge, I am of the view that both the Courts below have rendered a concurrent finding against the appellant which finding is not perverse and thus no interference is warranted with the said concurrent findings. In my view, no substantial question of law arises in the present second appeal.

6. Mr.Joshi, learned counsel for the appellant at this stage makes a request that the appellant be granted a reasonable time to vacate the suit premises and during such period, the appellant and/or the persons occupying the said suit premises would not part with possession and would not create any third party rights in respect of the suit premises. He submits that his client would file an undertaking to this effect within two weeks from today.

7. I therefore pass the following order :-

- (i) Second Appeal is dismissed;
- (ii) The appellant is however granted six months' time to vacate the suit premises;
- (iii) The appellant and/or other occupants occupying the suit premises shall file an undertaking in this Court disclosing the names of the persons occupying the suit premises and shall undertake to vacate the suit premises during the period of six months from today;
- (iv) The appellant and other occupants will not create any third party rights and will not part with possession in the suit premises. Undertaking is accepted. Undertaking in the form of the affidavits shall be filed within two weeks from today. Affidavit-cum-Undertaking shall be furnished to the learned advocate for the respondent simultaneously;
- (v) It is made clear that the appellant or any occupants in the suit premises are allowed to stay therein for a period of six months from today. No further extension would be granted;
- (vi) If the appellant or other occupants do not vacate the suit premises, the Court Receiver, High Court, Bombay shall stand appointed who shall take forcible possession of the suit premises from the appellant or other occupants found in possession and shall hand over the same to the respondent;
- (vii) If the appellant or other occupants do not file any undertakings within a period of two weeks from today, the appellant or other occupants would not be allowed to continue in the suit premises then the Court Receiver shall take forcible possession from the appellant or other occupants;

- (viii) In view of dismissal of the second appeal, civil application does not survive and is accordingly disposed of;
- (ix) There shall be no order as to costs.

R.D. DHANUKA, J.