

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

**APPEAL FROM ORDER NO.134 OF 2015
WITH
CIVIL APPLICATION NO.171 OF 2015**

Pradnya Prasanna Sawant @

Lalita Gopal Vichare

Versus

Baburao Bhaurao Nigudkar

: Appellant.

: Respondent.

Mr. S S Redekar for the Appellant.

Ms. S D Sonawane for the Respondents

CORAM : R. M. SAVANT, J.

DATE : 14th June 2016

P.C.

1 The above Appeal from Order challenges the order dated 09/01/2015 passed by the learned Judge of the City Civil Court, Greater Bombay by which order the Notice of Motion No.935 of 2014 filed by the Appellant – original Plaintiff came to be rejected.

2 The suit in question being Short Cause Suit No.664 of 2014 has been filed by the Appellant – original Plaintiff claiming the relief that she should not be dispossessed by the Respondent/Defendant without due process of law. The suit premises are Room No.165, Building No.5, Chembur Panchsheel CHS, Subhash Nagar, Chembur, Mumbai – 71. In so far as the said premises are concerned, one Saraswatibai Sakharam Nigudkar was the original tenant of the suit premises. The said Saraswatibai was married to Sakharam

Baburao Nigudkar in the year 1943. It was the case of the Plaintiff that in the year 1954, the Bombay Housing Board constructed a building for residential purpose and allotted the suit premises to the said Saraswatibai on tenancy basis. The Plaintiff claims to be niece of the said Saraswatibai whereas the Defendant is the brother in law of the said Saraswatibai being brother of the husband of the said Saraswatibai. It seems that the said Saraswatibai expired in the year 1993, and it is after the death of the said Saraswatibai that a dispute came to be filed in the Co-operative Court by the Respondent herein i.e. the original Defendant – Baburao Bhaurao Nigudkar being Dispute No.177 of 1994. The said Dispute it seems came to be filed against one Krishna and Jaywant Sakham Nigudkar and the housing society. In so far as the said Krishna is concerned, her real name is Manisha and her husband's name is Madhukar. The said Manisha @ Krishna is the sister of the Plaintiff. It seems that the said Dispute No.177/1994 which was filed by the Respondent herein in the Co-operative Court came to be withdrawn by him. Thereafter the Respondent filed another Dispute in the Co-operative Court being No.326 of 1994 for membership of the society comprising of the occupants of the building wherein the suit premises are situated. The said Dispute came to be decreed and the society was directed to confer membership on the Respondent. The Respondent thereafter filed another Dispute being No.CCI/222/2001 against Madhukar and Manisha @ Krishna and in the said Dispute sought possession of the suit premises. The Co-operative Court allowed the said Dispute by its

judgment and order dated 21/06/2008 and directed the said Madhukar and Manisha @ Krishna to hand over the possession. It seems that the said Award passed by the Co-operative Court was challenged right up to the Apex Court, the Apex Court it seems dismissed the SLP filed against the order passed by this Court on 17/02/2013. The Award/decreed passed by the Co-operative Court was put in execution in which execution proceedings possession warrant was issued. Pursuant to the said possession warrant when the bailiff visited the suit premises for execution he found that the Madhukar and Manisha @ Krishna were in possession of the suit premises and they were not ready to hand over the possession. The bailiff accordingly submitted his report to the Executing Court. Hence in so far as the possession is concerned, the bailiff reported that it is only Madhukar and Manisha @ Krishna who were in possession of the suit premises. The Appellant herein thereafter filed the instant suit apprehending her dispossession on the basis of the Award passed by the Co-operative Court in Dispute bearing No.CCI/222/2001. In the said suit the Appellant filed the instant Notice of Motion for an injunction restraining the Defendant from dispossessing her from the suit premises i.e. Room No.165, Building No.5, Chembur Panchsheel CHS, Subhash Nagar, Chembur Mumbai.

3 The Defendant filed his reply to the said Notice of Motion and it was the contention of the Defendant that the Plaintiff has filed the instant suit

in collusion with her sister Manisha @ Krishna and her husband Madhukar with a view to frustrate the Award passed by the Co-operative Court.

4 The Trial Court i.e. the learned Judge of the City Civil Court, Greater Bombay considered the Notice of Motion and by the impugned order dated 09/01/2015 has rejected the same. The rejection is on the ground that there is already an Award passed by the Co-operative Court in CCI/222/2001 which is a decree for possession. The Trial Court referred to the facts which have been narrated herein above viz. that the bailiff had reported that only Madhukar and Manisha @ Krishna were found to be in the suit premises. The Trial Court observed that though the proceedings in the Co-operative Court being CCI/222/2001 were pending between the year 2001 and 2008, thereafter the Appeal was pending in the Co-operative Appellate Court till the year 2014, the Plaintiff did not make any attempt to appear in the proceedings and contend that she is in actual possession of the suit premises and therefore she should be added as a party to the said proceedings. The Trial Court therefore observed that the attempt seems to be to frustrate the Award passed by the Co-operative Court granting possession to the Defendant. The Trial Court therefore did not deem it appropriate to exercise the discretion in favour of the Appellant original Plaintiff and accordingly dismissed the Notice of Motion.

5 In my view, having regard to the reasons which have been mentioned by the Trial Court which have already been adverted to herein above, the finding of the Trial Court in the teeth of the Award passed by the Co-operative Court in CCI/222/2001 that the Plaintiff has not made out any case for grant of discretionary relief of temporary injunction cannot be faulted with. There is therefore no merit in the above Appeal from Order, the same is accordingly dismissed. In view of the dismissal of the above Appeal from Order, Civil Application No.171 of 2015 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]