

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST.NO.3826 OF 2016
WITH
CIVIL APPLICATION ST.NO.3829 OF 2016**

Chandaben Ratilal Shah

..Appellant

Vs.

Sanjay Ratilal Shah & Ors.

..Respondents

Mr. N. A. Mogre for the Appellant / Applicant

Mr. R. P Surve for the Respondent No.1

Mr. J. S. Gaikwad for the Respondent Nos.2 to 5

CORAM : R. M. SAVANT, J.

DATE : 14th JULY, 2016

P.C.

1 The above Appeal From Order takes exception to the order dated 26-6-2015 passed by the Learned Judge of the City Civil Court, Mumbai by which order the Notice of Motion filed by the Appellant / original Plaintiff came to be partly allowed and the Defendants were restrained from dispossessing the Plaintiff or causing obstruction to her possession of peaceful enjoyment of the suit premises in any manner. However, the other relief granted was that the Defendant Nos.4 & 5 were restrained from visiting the suit premises on any pretext. Hence in so far as the Respondent Nos.4 and 5 are concerned, they were restrained from entering the suit premises. The Appellant is the original Plaintiff who is 82 years of age. It is her case that on account of the harassment and ill treatment given by the Defendants that she is constrained to file the Suit in question and seeks the reliefs that have been

sought in the Suit. In the said Suit, the Appellant has filed the instant Notice of Motion being No.1484 of 2015 for a mandatory order for the removal of the Defendant Nos.1 to 3 from the suit flat No.2 in Kanan Nagar, N.C. Kelkar Road, Dadar, Mumbai-400028 and not interfering with the Plaintiff's use, enjoyment and possession of the suit premises. The Plaintiff also sought an injunction for restraining the Defendant Nos. 4 and 5 from entering the premises. The Defendant No.1 is the son of the Plaintiff, Defendant No.2 is the daughter-in-law of the Plaintiff, Defendant No.3 is the grandson of the Plaintiff, Defendant No.4 is the granddaughter of the Plaintiff and the Defendant No.5 is the husband of the granddaughter.

2 The Trial Court deemed it appropriate to allow the Notice of Motion against the Defendant Nos.4 and 5, in so far as the grant of injunction restraining them from entering into the suit premises is concerned, according to the Trial Court, if the Plaintiff does not desire that they visit the suit premises, then the said Defendants cannot have any right to visit the suit premises. In so far as the Defendant Nos.1 to 3 are concerned, the Trial Court was of the view that an order of a mandatory nature could not be passed at the said stage as the same would virtually amount to decreeing of the Suit at the interim stage. The Trial Court therefore as indicated above has partly allowed the Notice of Motion to the extent of restraining all the Defendants from interfering with the possession of the Plaintiff and in so far as the

Defendant Nos.4 and 5 are concerned, it has restrained them from visiting the suit premises. Having regard to the nature of the relief sought against the Defendant Nos.1 to 3 namely of a mandatory order seeking their removal, in my view, the order of the Trial Court rejecting the said relief at the interim stage cannot be found fault with. The Learned Counsel appearing for the Appellant, however was at pains to contend that having regard to the age of the Plaintiff and also having regard to the manner in which the Defendant Nos.1 to 3 are conducting themselves an order of a mandatory nature was required to be passed. In my view having regard to the facts and circumstances of the case and with a view to see to it that the dispute is given a quick quietus, hence rather than interfering with the impugned order, it would be just and proper to direct the Trial Court to decide the Suit within a particular time frame as the Trial Court having regard to the nature of the dispute has already expedited the Suit by the impugned order. Hence the following directions:

(a) The impugned order dated 26-6-2015 passed by the Learned Judge is not interfered with.

(b) Since the hearing of S.C. Suit No.3348 of 2014 has already been expedited by the Trial Court, the same is directed to be disposed of latest by 31-1-2017.

(c) Needless to state that the Suit would be decided on its own merits and in

accordance with law.

3 The Learned Counsel appearing for the parties Mr. Mogre for the Appellant / Plaintiff, Mr. Surve for the Respondent No.1 and Mr. Gaikwad for the Respondent Nos.2 to 5 states that their respective clients would co-operate in the early disposal of the Suit as directed by this Court.

4 With the aforesaid directions, the Appeal From Order is disposed of.

5 In view of the disposal of the above Appeal From Order, the Civil Application St. No.3829 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]