

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7050 OF 2016

Indira Shripat @ Babu Gurav ... Petitioner
Vs.
Bhikhubhai Vesta Dubli and others ... Respondents

Mr. Balasaheb R. Deshmukh for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JUNE 24, 2016

P.C. :

Heard Mr. Deshmukh, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 13.05.2016 passed by the appellate Bench of the Small Causes Court at Bandra, Mumbai below exhibit-9 in Marji Application No.46 of 2016 in R.A.E.&R. Suit No.114/237 of 2006. By that order, the appellate Court dismissed the application exhibit-9 filed by the petitioner herein for directing the respondents-plaintiffs to open the lock of the suit premises and allow the petitioner to occupy subject to giving undertaking in the appeal. Petitioner has also sought stay to the execution and operation of the impugned judgment and decree dated 08.06.2010 passed by the Small Causes Court, Bandra in that Suit.

3. In paragraph 6 of the impugned order, appellate Court has recorded that the petitioner did not remove her belongings and the same are still lying in the suit premises. Petitioner is residing exactly outside the suit premises and causing nuisance to the respondents.

4. The matter was heard at length in the morning session and was kept back so as to enable Mr. Deshmukh to take instructions from the

petitioner as to whether she is pressing application exhibit-9 as also she is willing to give undertaking as to whether she is willing to remove herself along with her belongings from the suit premises.

5. Mr. Deshmukh, upon taking telephonic instructions from the petitioner, states that petitioner will not press application exhibit-9 and that she will remove her belongings, which are lying outside the suit premises and will also remove herself and to that effect she will file undertaking before the executing Court. She will also file copy of the undertaking in the appellate Court. He states that within two weeks from today petitioner will file the said undertaking. He further states that it may be made clear that this is subject to the outcome of the pending appeal.

6. In view thereof, application exhibit-9 is allowed to be withdrawn and is dismissed as withdrawn. Petitioner shall file undertaking within two weeks from today in the executing Court to the effect that she will remove her articles lying outside the suit premises as also to remove herself from outside the suit premises. A copy whereof shall be filed in the appellate Court.

7. It is made clear that the said undertaking shall be subject to the outcome of the appeal. In view thereof, Petition is disposed of with no order as to costs.

8. Mr. Deshmukh states that petitioner is 75 years old and the appellate Court may be directed to dispose of the appeal in a time bound manner. Petitioner is at liberty to file application before the appellate Court for early hearing / disposal of the appeal. If such application is made, the learned appellate Court will pass the appropriate order.

(R. G. KETKAR, J.)