

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 1008 OF 2016****Shubhangi Gopal Kulkarni & Ors.****..... Appellants****VERSUS****Dr.Amir Cassam****..... Respondent**

Mr.Kedar Dighe, i/b. Mr.Vishal Khanavkar for the Appellants.

Mr.S.M.Gorwadkar, Senior Advocate, i/b. Mr.Sujay Gangal for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 30th NOVEMBER, 2016****P.C.**

Papers are allowed to be produced at 03.00 p.m.

2. Admit. Respondent waives service. By consent of parties, appeal is heard forthwith finally.

3. The appellants (original defendants) have impugned order dated 9th March,2016 passed by the learned Joint Civil Judge, Senior Division, Pune directing the appellants to deposit an amount of Rs.12,000/- per month per flat i.e. total Rs.24,000/- on account of occupation charges in respect of the suit flats from the date of the suit till the date of the order and thereafter continue to deposit in each succeeding month before 10th day of each month till the decision of the suit and granting liberty to the plaintiffs to withdraw the said amount.

4. Mr. Dighe, learned counsel for the appellants (original defendants) submits that the appellant no.1 has been staying in the suit premises for last 16 years. It is submitted by the learned counsel that the appellant no.1 has been staying with the

respondent as his wife for last 16 years and has contributed substantial amount for purchase of these two flats.

5. In my view at this stage without going into the issue as to whether the appellant no.1 has contributed any amount for purchase of the two flats and whether the appellant no.1 has been staying with the respondent as his wife for last more than 16 years, in my view interest of justice would be met with if the ad-interim order passed by this court on 30th September, 2016 is continued till the disposal of the Special Civil Suit No.1305 of 2015 on the condition that the appellants will not create any third party rights in the said flats. The appellant no.1 is 65 years old whereas the original plaintiff is around 89 years old. In my view the interest of justice would be met with if the suit itself is heard expeditiously.

6. I, therefore, pass the following order :-

- (a) Appeal from order is disposed of by continuing the ad-interim order passed by this court on 30th September, 2016 as interim order which shall be in force till disposal of the Special Civil Suit No.1305 of 2015.
- (b) It is made clear that during the pendency of the suit, the respondent shall not dispossess the appellants for non-payment of the deposit as directed by the learned trial judge by an order dated 9th March, 2016.
- (c) It is also made clear that these appellants shall not create any third party rights in respect of the suit property during the pendency of the suit.
- (d) In the event of the learned trial judge holding that the

appellants are required to pay any amount to the respondent for occupying the suit premises, the appellants will abide by the said order.

(e) It is made clear that the learned trial judge shall decide the matter on its own merits without being influenced by the observations made by the learned trial judge in the impugned order dated 9th March, 2016, the same being prima facie.

(f) Both the parties are directed to co-operate with each other and with the learned trial judge in expeditious disposal of the suit.

(g) The learned trial judge shall make an endeavour to dispose of the suit within one year from the date of the first hearing.

(h) The parties as well as the learned trial judge to act on the authenticated copy of this order.

(i) No order as to costs.

(R.D.DHANUKA, J.)