

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

CIVIL REVISION APPLICATION NO. 456 OF 2016

Mr. Chandrakant S. Shah

..Applicant

Vs

Mrs. Tulsi Kishan Bhatia

.. Respondent

Mr. N.V.Walawalkar, Senior Advocate i/b Ms. Seema K. Chopda,
Advocate for Applicant.

Mr. V.T.Lulia, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 31/08/2016

PC:

1. Heard Mr. N.V.Walawalkar, learned senior counsel for the applicant and Mr. V.T.Lulia, learned counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant', has challenged the Judgment and decree dated 21st and 22nd November, 2007 passed by the learned Judge of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. & R. Suit No. 12/24 of 2000 as also the Judgment and decree dated 14.6.2016 passed by the Appellate Bench of the Small Causes Court in Appeal (A1) No.23 of 2008. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as 'plaintiff'.

3. On 30.8.2016, Mr. Walawalkar made elaborate submissions.

He sought time to take instructions for not pressing this Application subject to grant of reasonable time to vacate. Ms Chopda states that the applicant is present in the Court. She has tendered photocopy of Aadhaar Card of the applicant which is taken on record and marked "X" for identification. Upon taking instructions from him, she states that the applicant will not press this Application, if six weeks time to vacate the suit premises is given to him. She states that the applicant is in possession of the suit premises. The applicant has neither created third party interest nor parted with possession. The applicant will hereafter neither create third party interest nor part with possession. Statements are accepted.

4. Ms.Chopada assures that within three weeks from today, the applicant and all adult family members residing with him, will file usual undertaking in this Court, after giving advance copy to other side, incorporating therein:

- (i) that they are in possession of the suit premises and nobody else is in possession;
- (ii) that they have neither created any third party interest nor parted with possession;
- (iii) that they will hereafter neither create third party interests nor part with possession;
- (iv) that they will pay arrears of rent, if any, to the plaintiff within three weeks from today and will go on paying rent from

September, 2016 till handing over possession on 28.2.2017 on or before 10th day of succeeding month/s.

(v) that they will not apply for further extension of time;

(vi) that the defendant will hand over vacant and peaceful possession of the suit premises to the plaintiff on or before 28.2.2017.

5. In view thereof, Application is disposed of as not pressed in the following terms:

(i) The Judgments and decrees passed by the Courts below are upheld.

(ii) Tenancy of the applicant-defendant stands terminated.

(iii) Subject to the applicant and all adult family members residing with him in the suit premises filing undertaking in the aforesaid terms within three weeks from today and serving copy in advance to other side, eviction decree shall not be executed on or before 28.2.2017.

(iv) Mr. Lulia submits that the plaintiff may be permitted to withdraw the amount deposited by the defendant. The plaintiff is permitted to withdraw the amount deposited by the defendant along with accrued interest, if any, unconditionally.

(iii) List the Application for reporting compliance after four weeks. Order accordingly.

(R.G.KETKAR, J.)