

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.418 OF 2017

WITH

CIVIL APPLICATION NO.85 OF 2017

IN

SECOND APPEAL (STAMP) NO.418 OF 2017

Smt. Leena Suresh Sawant

...Appellant

vs.

Shri Subodh Prabhakar Natwekar & Ors.

...Respondents

....

Mr. Vishal V. Kanade, a/w. Mr. Kirit J. Hakani and Ms. Niyati Hakani,
i/b. Kirit J. Hakani, for the Appellant.

Mr. C.G. Gavnekar, i/b. Rakesh Bhatkar, for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATED : 7 FEBRUARY 2017

P.C. :

. This Second Appeal challenges a judgment and order passed by the District Court at Ratnagiri in Civil Appeal No.187 of 2012. By the impugned judgment and order, the learned District Judge dismissed the appeal filed by the Appellant herein and confirmed the judgment and decree dated 22 February 2008 passed by Civil Judge, Senior Division at Ratnagiri in Special Civil Suit No.21 of 2000 filed by Respondent No.1. The decree of the Trial Court grants specific performance of an agreement for sale executed by the predecessor-in-title of Respondent Nos. 2 to 5 (Original Defendants) in favour of Respondent No.1 (original

Plaintiff). The suit premises, owned by the predecessor-in-title of Respondent Nos. 2 to 5, consisted of an eating house, which is purportedly being run by the Appellant herein.

2. After the matter is heard at some length, learned Counsel for the Appellant seeks leave to withdraw the Second Appeal. He, however, seeks liberty to file her own appropriate proceeding to assert her rights against Respondent Nos. 2 to 5 and/or Respondent No.1 herein. Learned Counsel for the Appellant submits that, in the meanwhile, to enable the Appellant to adopt her own proceeding, the ad-interim stay operating in respect of the decree passed in favour of Respondent No.1, may be continued by this Court for a limited period. Learned Counsel for Respondent No.1 objects to such liberty being granted. He submits that, the case of the Appellant, on the basis of which he proposes to adopt a new proceeding, is already canvassed by her in her written statement and this case has been considered on merits by both the courts below and negatived.

3. Nothing can prevent the Appellant from adopting her own proceedings. As and when she adopts such proceedings, the question whether her case has any merit will be determined independently and in accordance with law by the court, where such proceedings are adopted, by considering *inter alia* the defence offered by the Appellant and its treatment by the courts below in the present suit. The liberty that may be reserved by this Court would only imply that withdrawal of this appeal cannot come in the way of the Appellant adopting her own proceedings. It does not, in any way, imply that while granting of such

liberty or continuing ad-interim relief to the Appellant, this Court has applied its mind to the findings on the respective points urged by the parties before this Court. All rights and contentions of the parties in respect of any future proceeding to be adopted by the Appellant evidently have to be kept open.

4. In the premises, the appeal is dismissed as withdrawn with liberty as prayed and in terms of the clarification recorded by this Court above.

5. One more thing needs to be clarified. In a special leave petition arising out of an order passed by this Court rejecting interim relief to the Appellant when the First Appeal was admitted (the First Appeal having since been transferred to the District Court and decided by the District Court in the impugned judgment and order), the Supreme Court granted ad-interim relief to the Appellant herein pending disposal of the First Appeal. This interim relief was granted to the Appellant on the condition of her depositing in this Court a sum of Rs.10,000/- per month, which was subsequently increased to Rs.20,000/- per month. This Court, at the stage of hearing of the First Appeal, was expected to pass appropriate directions in regard to the amount so deposited by the Appellant. The First Appeal, as noted above, was transferred to the District Court and decided by it in terms of the impugned judgment and order. There is, however, no order passed by the District Court insofar as the amount deposited by the Appellant is concerned. In view of the dismissal of the Appellant's First Appeal before the District Court and withdrawal of the Second Appeal today, the amount deposited by the

Appellant, along with accrued interest, if any, will have to be made over to Respondent No.1. Accordingly, the office is directed to allow Respondent No.1 to withdraw the amount deposited by the Appellant, along with accrued interest upto date.

6. The ad-interim relief operating in favour of the Appellant till date, as regards the execution of the impugned judgment and decree, shall continue to operate for a period of six weeks from today. The Appellant, however, shall pay an amount of Rs.20,000/- per month to Respondent No.1 during the period of this ad-interim continuation of stay.

7. It will be open to Respondent No.1 to adopt proceedings before the Trial Court for determination of mesne profits payable to Respondent No.1 for the period after the judgment and decree of the Trial Court in view of the interim stay continued so far in favour of the Appellant. All rights and contentions of the parties on merits in this behalf are also kept open

8. Needless to add that in case the Appellant does not adopt the proceedings proposed or obtain any order from any court in that behalf, Respondent No.1 will be at liberty to execute the judgment and decree passed in his favour by the Trial Court.

9. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also disposed of.

10. Parties and all concerned to act on the authenticated copy of this order.

(S.C. GUPTE, J.)