

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1048 OF 2015

IN

SECOND APPEAL NO.26 OF 2010

WITH

CIVIL APPLICATION NO.175 OF 2017

IN

SECOND APPEAL NO.26 OF 2010

Leena D'Souza And Ors.

...Applicants

vs.

Shantaram B. Betkar And Anr.

...Respondents

....

Mr. P.R. Arjunwadkar, for the Applicants.

Mr. R.D. Soni, i/b. Ram & Co., for the Respondent/Original Appellant.

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CORAM : S.C. GUPTE, J.

DATED : 17 MARCH 2017

P.C. :

. Heard learned Counsel for the parties.

2. Civil Application No.1048 of 2015 seeks reliefs in respect of (i) payment of monthly compensation by the Respondents (Original Appellants in the Second Appeal) and (ii) Society's maintenance bills and taxes, including arrears in respect of the suit property from the date of filing of the suit in the Trial Court. The Appellants claim to be agreement purchasers in respect of the suit property, which is a flat in a Co-Operative Society. The Appellants claim to be in possession of the suit property in part performance of the agreement for sale executed in their

favour by the Applicants herein (Original Respondents to the Second Appeal). The suit filed by the Respondents to the Second Appeal seeks possession of the suit property from the Appellants claiming that the Appellants are in wrongful possession of the same. The suit has been decreed by the courts below. The Second Appeal is, however, admitted on a substantial question of law. By an interim order passed in the appeal, the Appellants' possession of the suit property is protected. On these facts, there is no basis for awarding any adhoc compensation against the Appellants during the pendency of the appeal as a condition for protecting their possession. The prayer for compensation of Rs.11,000/- is, thus, rejected. So far as Society maintenance charges and taxes, including arrears are concerned, it is submitted by learned Counsel for the Appellants that the Appellants have paid upto date arrears in respect of all items claimed by the Society, save and except non-occupancy charges. It is submitted that the Appellants, being agreement purchasers in possession of the suit flat in part performance, are not liable in law to pay any non-occupancy charges to the Society. Learned Counsel submits that his clients have cleared all other items in the Society's bills. Learned Counsel for the Appellants submits that if there is any amount in arrears from out of these other items, his clients shall clear the same within a period of four weeks from today. The statement is accepted. As far as non-occupancy charges are concerned, learned Counsel for the Appellants states that his clients are contesting the same, but in the event of these non-occupancy charges being found payable, the Appellants shall pay the same along with all previous arrears. Even this statement is accepted. Learned Counsel for the Appellants also states, on instructions from his clients, that in terms

of the affidavit filed by his clients, they shall not create any third party rights in respect of the suit property or part with possession of the property.

3. In view of these statements, which are accepted by this Court, there is no further order necessary in accordance with prayer clause (a) of this Civil Application. Civil Application No.1048 of 2015 is disposed of accordingly.

(S.C. GUPTE, J.)