

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 7 OF 2017
WITH
CIVIL APPLICATION NO.9 OF 2017
(FOR STAY)

Mrs. Jyotsana K. Mehta .. Appellant
vs.
Mrs Mamta Neal Mehta and anr. .. Respondents

WITH
CIVIL APPLICATION NO. 269 OF 2017

Ms Rekha Safari for the Appellant.
Ms Sunita M. Poddar i/b. Khan Farhana for the Respondents in AO
No. 7 of 2017 and Applicants in CA 269 of 2017.

CORAM : M. S. SONAK, J.
DATE : 05 APRIL 2017.

P.C. :-

1] The challenge in this appeal is to the order dated 27 December 2016, by which, learned Trial Judge has declined to grant the *ex-parte* relief to the appellant-plaintiff. However, the motion taken out by the appellant, for interim reliefs, is pending and due to be considered.

2] The appellant is mother-in-law of respondent No. 1 and grandmother of respondent No.2. There are disputes between the parties and it is the case of the appellant that she is exclusive owner of the suit premises and the respondents have no right or authority to insist on staying in the suit premises. The appellant points out that her son is handicapped, therefore, he is required to stay in the suit premises. She maintains that the respondents have no right or authority to stay in the suit premises and relies upon the decision of

S.R. Batra and Arn vs. Smt. Taruna Batra – AIR 2007 SC 1118.

3] Ms Rekha Safari, learned counsel for the appellant, points out that the impugned order is incorrect because it proceeds on the basis that the respondents were not served, when in fact, the respondents had been duly served. She reiterates the contention of the appellant and submits that this is a fit case where the ad-interim relief was required to be granted.

4] Ms S.M. Poddar, learned counsel for the respondents, submits that there is a serious issue of service. She submits that even the hearing in the notice of motion is adjourned to June 2017, in order to enable the appellant to take steps to effect proper service. She submits that the respondent No.1 is also handicapped. She submits that the respondents are staying in the suit premises and the reliefs of the nature claimed by the appellant, can never be granted *ex-parte* or in case at the ad-interim stage. She submits that there is no jurisdictional error in the impugned order and therefore, this appeal may not be entertained.

5] The rival contentions now fall for my determination.

6] Whatever may have been disputes with regard to service, one thing is clear that the respondents have now been duly served at least in this appeal from order. Further, to this appeal from order, is annexed the plaint, copy of the notice of motion and the documents in support of the plaint. The paper book in this appeal from order is duly received by the respondents and this position is now confirmed

by the respondents. Accordingly, the respondents be deemed to have been served in the suit itself as of today. On this basis, the respondents shall be entitled to file their written statement to the plaint within a period of 30 days from today. Further, the respondents are directed to file their reply to the notice of motion as expeditiously as possible and in any case within 10 days from today.

7] The hearing in the notice of motion is pre-poned to 17 April 2017. If on that date, the appellant desires to file an affidavit of rejoinder, learned Trial Judge is requested to grant time to the appellant to file the rejoinder up to 21 April 2017. The notice of motion to be taken up for hearing soon thereafter, so that the notice of motion itself may be disposed of on its own merits and in accordance with law, as expeditiously as possible and in any case within a period of six weeks from today. It is made clear that since the appellant is elderly lady, learned Trial Judge will give priority to this matter, so that the notice of motion is positively disposed of within this time frame.

8] It is clarified that this Court has not adverted to the merits of the matter and therefore, learned Trial Judge to decide the notice of motion, in accordance with law and on its own merits.

9] All contentions of all parties are kept open.

10] The appeal from order is disposed of in the aforesaid terms.

11] The statement made by respondent No.1, recorded in the order dated 11 January 2017, is discharged.

12] In view of disposal of main appeal, the civil applications do not survive and the same are also disposed of.

13] The appellant seeks a stay on the order just pronounced. There is no question of any stay and in any case, the request is declined.

(M. S. SONAK, J.)

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