

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.2342 OF 2016
IN
FIRST APPEAL NO. 919 OF 2016*

Shri Mahendra Baburam Gupta .. Applicant
Vs.
Shri. Baburam Dabbalram Gupta & Anr. ..Respondents
...
Mr. G.J. Paryani for Applicant-Appellant.
None for Respondents.

***CORAM : M.S. SONAK, J.
DATE : 17th MARCH 2017.***

P.C. :

- 1] Heard Mr. G.J. Paryani, learned counsel for the applicant-appellant.
- 2] Mr. Paryani, learned counsel for the applicant, requests for ad-interim relief in the matter. He submit that the learned Trial Judge has ignored the material facts on record, which establishes that there was a family settlement entered into between the parties in the year 2008. He submits that in terms of such family settlement, he was required to pay an amount of Rs.4,00,000/- to respondent No.1, who is his father, in the year 2008 itself.
- 3] Upon a query as to whether such amount was paid to respondent No.1, Mr. Paryani admitted that such amount was not paid in the year 2008. Upon further query as to whether the appellant /applicant is willing to deposit an amount of Rs.10,00,000/- in this court as a condition for continuing to occupy despite the decree of eviction, Mr.Paryani stated that he is not in a position to make any statement in this regard.

4] If this be the position, then, there is no question of grant of any ad-interim relief in the matter. The ad-interim relief is therefore, refused. It is made clear that the execution taken out shall proceed and shall not be delayed or deferred on the grounds of pendency of the appeal.

5] After this order was dictated in the open court, Mr. Paryani now states that in terms of family settlement, an amount of Rs.8,00,000/- was to be paid to the appellant's brother and no amount was required to be paid to respondent No.1, i.e., the appellant's father, since, respondent No.1 had filed an affidavit to relinquish his tenancy rights in the suit premises in favour of the appellant. It is pertinent to note that the Trial Court has recorded a finding that the affidavit dated 30 May 2008, to which, reference is made by the appellant, is a forgery. No doubt, this is a finding of fact, which is questioned in the appeal. However, the minimum that was expected in a situation of this nature, is that the appellant unhesitatingly offers to deposit a sizeable amount in this court, which, the appellant has declined to do. This means that the appellant neither wishes his father to stay in the suit premises nor is the appellant willing to make any reasonable payment atleast to secure some rights in the suit premises. Such conduct, disentitles the appellant/applicant to any ad-interim reliefs.

6] The motion for ad-interim relief is therefore, rejected.

7] The Registry to forward a copy of this order to the execution court within a period of one week from today.

8] The civil application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)