

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

**APPEAL FROM ORDER NO.537 OF 2015
WITH
CIVIL APPLICATION NO.677 OF 2015
IN
APPEAL FROM ORDER NO.537 OF 2015**

Mr.Amjad Ali Shafi Khan ..Appellant/Applicant
V/s.

Mr.Abdul Hameed Abdul Gani Shaikh ..Respondent

Mr.A.M. Saraogi for the Appellant/Applicant.

Mr.Mayur Khandeparkar i/by Mr.M.A. Shah for the Respondent.

Mr.Amjudali Shafi Khan Applicant present in person.

CORAM : M. S. SONAK, J.

DATE : 20 MARCH 2017.

P.C.

1. Heard Mr.Saraogi for the appellant and Mr.Khandeparkar for the respondent.

2. The appellant is present in the Court and his presence is recorded.

3. After this matter was heard for some time, the same is disposed of with the following agreed order:-

ORDER

a) The impugned order dated 20-03-2015 dismissing

the appellants Notice of Motion No.617 of 2015 is set aside.

b) The Notice of Motion No.617 of 2015 is hereby restored to the file of the learned Trial Judge.

c) The appellant is granted leave to amend the prayer clause in the Notice of Motion No.617 of 2015 by way of addition of formal prayer, seeking the setting aside of judgment and decree dated 08-03-2013. Such amendment to be carried out within a period of two weeks from today.

d) This order is made subject to the appellant paying cost of Rs.1,50,000/- to the respondent within a period of two weeks from today.

e) The appellant to deposit before the learned Trial Judge a sum of Rs.5 lakhs within a period of four weeks from today.

4. The learned Trial Judge, after ensuring that costs of Rs.1,50,000/- are paid and a sum of Rs.5 lakhs is deposited, the learned Trial Judge shall decide the Notice of Motion No.617 of 2015 on its own merits and in accordance with law and affording an opportunity of hearing to both the parties. The learned Trial Judge need not be influenced by any observations made in the impugned order dated 20-03-2015 or by the present order.

5. The Notice of Motion No.617 of 2015 shall be disposed of within a period of three months from today. The parties shall, until the disposal of the Notice of Motion, maintain status-quo in respect of the suit premises.

6. The appellant state that one Mr.Salimbhai has been inducted as licensee in the suit premises. Such licensee may continue to occupy the suit premises subject to the further orders to be made by the learned Trial Judge. However, the appellant shall not create any third party rights or even induct any other person in the suit premises, without obtaining leave from the learned Trial Judge. The appeal is disposed of in the aforesaid terms

7. All contentions of all parties are left open. It is clarified that this Court has not expressed any opinion in the merits of the matter. For the aforesaid the Civil Application does not survive and the same is disposed of.

8. All concerned to act on the basis of the authenticated copy of this order.

(M. S. SONAK, J.)