

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 426 OF 2017
WITH
CIVIL APPLICATION NO. 271 OF 2017
IN
CIVIL REVISION APPLICATION NO. 426 OF 2017
WITH
CIVIL APPLICATION NO. 290 OF 2017
IN
CIVIL REVISION APPLICATION NO. 426 OF 2017
WITH
CIVIL APPLICATION NO. 301 OF 2017
IN
CIVIL REVISION APPLICATION NO. 426 OF 2017

Shwetamber Murtipujak Tapogachh
Jain Sangh ..Applicant
vs.
Usha Sunder Saxena & Ors. ..Respondents

WITH
CIVIL REVISION APPLICATION NO. 427 OF 2017
WITH
CIVIL APPLICATION NO. 272 OF 2017
IN
CIVIL REVISION APPLICATION NO. 427 OF 2017

Shwetamber Murtipujak Tapogachh
Jain Sangh ..Applicant
vs.
Ramesh Ganesh Saxena & Ors. ..Respondents

Ms Shweta Sharma and Charoo S. i/b. Solicis Lex for Applicant.
Ms Shweta Agrawal for Respondents.

CORAM : M. S. SONAK, J.
DATE: 18 SEPTEMBER 2017

P.C :

1] Time limit for payment of costs in terms of orders dated 29th
August 2017 and 4th September 2017 is extended by a period of

one week from today. Learned counsel for the applicant states that the costs amount was attempted to be paid in cash, however, the Registry has declined to accept the same and a demand draft has now been taken out. Accordingly, Registry to accept the demand draft, if tendered within a period of one week from today.

2] Rule in both the Civil Revision Applications.

3] Ms Shweta Agrawal waives service on behalf of respondent nos. 1 and 2 in CRA No. 426 of 2017. She also waives service on behalf of respondent No. 1 in CRA No. 427 of 2017.

4] Applicant to take steps to serve the remaining respondents.

5] The CRA No. 427 of 2017 relates to the suit premises bearing No.1A. Admittedly, the applicant continues in possession of the suit premises No.1A. Accordingly, in respect of suit premises No.1A there shall be interim relief restraining the respondents from evicting the applicant in pursuance of the impugned eviction decrees. This restraint shall be subject to the following conditions :

(A) The applicant to file usual undertaking within a period of four weeks from today;

(B) The applicant to deposit reasonable compensation at the rate of Rs.25,000/- (Rupees Twenty Five Thousand) per month effective from 1st May 2017, since, the date of the appeal court eviction decree is 2nd May 2017;

(C) The aforesaid compensation to be deposited before the trial Court on or before the 10th day of each succeeding month;

(D) Time limit for deposit of arrears shall be four weeks from today;

(E) The trial court to invest the amount in a Nationalized Bank;

(F) In case of any two consecutive defaults or three non consecutive defaults, the interim order now granted shall stand vacated without further reference to this Court.

6] Civil Application No. 272 of 2017 in CRA 427 of 2017 is disposed of accordingly.

7] The Civil Revision Application No. 426 of 2017 relates to the suit premises bearing No.1B. In pursuance of execution of the impugned decrees, the respondent Nos. 1 and 2 have recovered possession of the suit premises 1B.

8] In CRA No. 426 of 2017, the applicant has taken out civil application no. 271 of 2017 for stay as also civil application No. 290 of 2017 seeking restoration of possession. In this regard, it is to be noted that the eviction decree was made by the appeal court on 2nd May 2017. In pursuance of the execution levied, the Bailiff along with Warrant of Possession attempted to take possession on

the first occasion on 31st July 2017 and thereafter, on 2nd August 2017 and 8th August 2017. It is only on 2nd August 2017 that this revision came to be instituted. Further, records indicate that though the applicant has claimed to be co-owner in respect of the suit premises, they did not bother to step into the witness box or offer themselves for cross-examination. Taking into consideration all these circumstances, there is no case made out for grant of mandatory injunction to restore possession at the interim stage to the applicant. Accordingly, the prayer for interim relief in the revision application is rejected on the ground that it has already been rendered infructuous. Similarly, civil application no. 290 of 2017 seeking restoration is also dismissed. However, this is a fit case, to impose restraint upon respondent Nos. 1 and 2, when it comes to sale or transfer of premises bearing No. 1B. Accordingly, the respondent Nos. 1 and 2 are restrained from selling or conveying the suit premises bearing No.1B without the leave of this Court.

9] Civil application Nos. 271 of 2017 and 290 of 2017 in CRA 426 of 2017 are disposed of accordingly.

(M. S. SONAK, J.)