IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 16 OF 2017
WITH
CIVIL APPLICATION NO. 19 OF 2017
IN
APPEAL FROM ORDER NO. 16 OF 2017

Mr. Ramesh Nahar & Anr. … Appellants
V/s.
Mr. Ramakant Shantaram Pawar & Ors. … Respondents

Mr. Vinod Desai for the Appellants.
Mr. Mangesh Bansod for Respondent No.1.
Mr. Girish Utangale a/w Mr. Chetan Mhatre i/b M/s Utangale & Co. for Respondent No.2.
Mr. D.G. Rangraj for Respondent No.3.

CORAM : M.S. SONAK, J.
DATE : 29th MARCH, 2017.

P.C. :

1 After this matter was heard for some time, the parties agree that this Appeal can be disposed of with the following agreed order :-

a) The appellants will obtain occupancy certificate in respect of Flat No.2103, Rehab Building, A-Wing, 21st floor at Prabhadevi and furnish a true copy thereof to Mr. Ramakant Shantaram Pawar (respondent No.1 herein).

b) Within a period of 15 days from the receipt of the true copy of the occupancy certificate, Mr. Ramakant Shantaram Pawar will vacate the transit accommodation presently provided to him by the appellants and shift to the aforesaid premises.

c) Further, Mr. Ramakant Shantaram Pawar, shall deposit before the learned Trial Judge a sum of Rs.15,000/- per month towards the occupation of the aforesaid premises. Such deposit shall be made on or before 10th day of each succeeding month.

2 The amount which will be deposited by Mr. Ramakant Shantaram Pawar will be invested by the learned Trial Judge in a Nationalized Bank in an appropriate interest bearing instrument until the disposal of the suit.

3 The placement of Mr. Ramakant Shantaram Pawar in possession of the aforesaid premises, shall be without prejudice to the rights and contentions of all parties, including in particular respondent No.3 herein, who claims that he is also required to be placed in joint possession of the suit premises.

4 The dispute between Mr. Ramakant Shantaram Pawar and Mr. Sudhir Shantaram Pawar (respondent No.3) shall be decided by the learned Trial Judge along with all other disputes which are raised in the Suit. Ultimately, if the learned Trial Judge comes to the conclusion that Mr. Sudhir Shantaram Pawar was also entitled to joint possession of the suit premises, the learned Trial Judge shall make appropriate orders as regards the amount that may be deposited by Mr. Ramakant Shantaram Pawar.

5 This Court has not adverted to the merits of the matter and the aforesaid arrangement is mainly because there was no necessity for the appellants to continue to provide transit accommodation, when infact the permanent alternate accommodation has been kept almost ready by the appellants. All that remains to be done is the obtaining of the occupancy certificate from the concerned authorities.

6 It is once again clarified that the aforesaid arrangement is without prejudice to the rights and contentions of all parties and it is for the learned Trial Judge to determine the rights and

contentions of all the parties, in accordance with law and on its own merits.

7 In case Mr. Ramakant Shantaram Pawar commits two consecutive or three non-consecutive defaults in depositing the amount of Rs.15,000/- per month, Mr. Sudhir Shantaram Pawar, respondent No.3, shall be entitled to apply to the learned Trial Judge to place him in possession of the suit premises on the same terms and conditions and again without prejudice to the rights and contentions of all the parties.

8 In S.C. Suit No.795 of 2014, Mr. Ramakant Shantaram Pawar is directed to implead Mr. Sudhir Shantaram Pawar as a defendant and to also carry out necessary amendments to the plaint, so that the *inter se* dispute between Mr. Ramakant Shantaram Pawar and Mr. Sudhir Shantaram Pawar, to that extent is possibly sorted out in the Suit itself. Necessary amendment to be carried out within a period of two weeks from today.

9 The Civil Application does not survive and the same is also disposed of.

(M.S. SONAK, J.)