

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION NO.184 OF 2018

Ambalal Pukhraj jain] Applicant

Vs.

Gajanan Mangesh Korgaonkar] Respondent

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Mr. B.R. Singh i/b R.B. Singh & Associates, for Applicant.

Mr. Yogeshwar S. Bhate, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 26TH JULY, 2018.

P.C.

Heard Mr. Singh, learned Counsel for the applicant and Mr. Bhate, learned Counsel for respondent No.3 at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as "plaintiff" has challenged the judgment and order dated 20th February, 2018 passed by the learned Judge, Court Room No.40 of the Court of Small Causes at Mumbai (Bandra Branch) in MARJI Application No.80 of 2016. By that order, the learned trial Judge allowed the application filed by respondent, hereinafter referred to as 'defendant No.3' under Order-IX, Rule-13 of the C.P.C for setting aside ex-parte decree dated 16th January, 2016 passed by the learned trial Judge in R.A.E Suit No.369/717 of 2013 by which the learned trial Judge directed defendant No.3 to deliver possession of Room No.4 in Parsi Chawl situate at CTS No.455, Pawaskar Road, Near Dahisar Subway, Dahisar (West), Mumbai – 400 068 (for short 'suit premises') to the plaintiff within two months from the date of the judgment. The learned trial Judge permitted defendants No.3 to 5 to file written statement after condoning delay.

3. Rule. Mr. Bhate waives service. Having regard to the narrow controversy raised in this Application as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and C.R.A is taken up for final hearing.

4. The matter was heard at length on 18th July, 2018 and was kept today so as to enable Mr. Bhate, to take instructions as to whether defendant No.3 is ready and willing to hand over possession of the suit premises to the plaintiff. It was made clear that upon handing over possession, suit will be restored to the file of the trial Court. Defendant No.3 will be permitted to file written statement. The parties will be permitted to adduce fresh evidence and that the plaintiff upon receiving possession, will neither create third party interest nor part with possession subject to his right to challenge the trial Court's order if it is adverse to him, he will abide by the outcome of the suit

5. Mr. Bhate submits that defendant No.3 as also Advocate Mr. Kunjan Thakur who filed affidavit in the trial Court is present in the Court. Mr. Bhate has tendered photo copy of Aadhar Card of defendant No.3, which is taken on record and marked 'X' for identification. Upon taking instructions from him, Mr. Bhate assures that on or before 15th August, 2018, he will hand over vacant and peaceful possession of the suit premises to the plaintiff and will not seek further extension for that purpose. Within four weeks from today, defendant No.3 will file written statement in the suit.

6. Mr. Singh assures that upon receiving possession, the plaintiff will neither create third party interest nor part with possession and subject to his right to challenge the trial Court's order if it is adverse to him, he will abide by the outcome of the suit. Statements made by learned Counsel for the parties, on instructions are accepted in the form of undertakings to this Court.

7. In view thereof, Civil Revision Application is disposed of in the following terms;

- [1] Impugned order stands set aside and in its place, this order is substituted.
- [2] R.A.E Suit No. 369/717 of 2013 is restored to the file of the trial Court.
- [3] Defendant No.3 will hand over vacant and peaceful possession of the suit premises to the plaintiff on or before 15th August, 2018.
- [4] Upon receiving possession, the plaintiff shall neither create third party interest nor part with possession and shall abide by the outcome of the suit subject to his right to challenge the order of the trial Court, if it is adverse to him.
- [5] Defendant No.3 will file written statement and serve copy on the other side within 4 weeks from today.
- [6] The trial Judge will decide the suit *de novo* and permit the parties to adduce evidence afresh.
- [7] The learned trial Judge is requested to decide the suit within one year from completion of recording evidence by the parties.
- [8] All contentions of the parties are expressly kept open.
- [9] Rule is made absolute in the aforesaid terms with no order as to costs.

8. List the C.R.A for reporting compliance on 20th August, 2018.

[R.G. KETKAR, J.]