

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.482 OF 2018

Shardaben Purshottam Patel and Anr.	 Appellants
V/s.	
Ashok Manibhai Patel	 Respondent

Ms. Vidya N. Shet, a/w. Mr. M.A. Vaid, I/by M/s. Vaid Associates, for the Appellants.

Dr. Birendra Saraf, a/w. Mr. Rajeev Carvello, Mr. Vikram Garewal and Mr. Bharat Jain, I/by M/s. I.C. Legal, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH SEPTEMBER, 2018.

P.C. :

1. Heard Ms. Shet, learned counsel for the Appellants, and Dr. Saraf, learned counsel for the Respondent.
2. This Appeal takes an exception to the order dated 2nd May 2018 passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.4489 of 2017 filed in Suit No.90 of 2018.
3. The said Notice of Motion was taken out by the Appellants, who are the Original Plaintiffs before the Trial Court, seeking temporary injunction to restrain the Defendant from removing them from the suit premises forcibly and obstructing them from using any common areas of the suit premises, without following the due process of law. The Trial

Court has, however, dismissed the said Notice of Motion. Hence, the instant Appeal.

4. Learned counsel for the Respondent makes a statement at bar that, Respondent does not intend to remove the Appellants from the suit premises by using any illegal force and Respondent also would not obstruct the Appellants, without following the due process of law, from using any common areas of the suit premises.

5. In view of this statement made at bar by learned counsel for the Respondent, the Appeal needs to be disposed off, keeping all the contentions of both the parties expressly open.

6. It is clarified that, this Court has not expressed any opinion as regards the merits of the matter.

7. It is needless to state that, the Appellants will not create any nuisance to the Respondent during their occupation in the suit premises.

8. The Trial Court to decide the Notice of Motion, which is filed by the Respondent, for appointment of the 'Court Commissioner' and also the Chamber Summons and the Notice of Motion filed by the Appellants as expeditiously as possible and preferably within a period of twelve weeks from the date of receipt of this order.

9. Needless to state that, in case of difficulty in implementation of this order, both the parties are at liberty to approach the Trial Court.

10. Appeal stands disposed off in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]