

JPP

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

***SECOND APPEAL NO. 587 OF 2016
with
CIVIL APPLICATION NO. 1179 OF 2016***

Mrs. Rekha Ramakant More. ... Appellant/Applicant.

V/s.

Smt. Suvarna Pramod Jadhav and Ors. ... Respondents.

Mr. V.S. Kapse for the Appellant/Applicant.

Mr. Vikram Walawalkar a/w. Sambhaji Kharatmal i/b. Suresh Sabrad
for Respondent 1.

CORAM : N.M. Jamdar, J.

DATE : 11 January, 2018.

Oral Order :-

The learned Counsel for the Appellant after arguing for some time states that the Appellant would be satisfied if a reasonable time to vacate the premises is granted to him. The learned Counsel for the Appellant states that one year's time to vacate the premises would be reasonable.

2. Even on merits the Applicant has no case. The Second Appeal arises from a suit filed by the Respondents under the Transfer of Property Act. By a notice dated 11 November 2011, the

lease of the Appellant has been terminated. Both the Courts have concurrently held that notice was validly issued. Nothing is shown how this is incorrect. I have gone through the Judgments and heard the oral arguments. Considering the limited nature of challenge available to question the termination of lease under Transfer of Property Act, there is no reason to interfere with the concurrent findings. No substantial question of law arises.

3. As regard the request of the learned Counsel for the Appellant to grant reasonable period is concerned, the Appellant is seeking one year's time to vacate and the learned Counsel for the Respondents on instructions states that all other occupants have vacated the property and it is only the Appellant, who continues to occupy because of which further plans of construction have been Stated. The learned Counsel for the Respondents states at the most six months' time may be granted to vacate.

4. Considering the facts and circumstances of the case and that what is being occupied by the Appellant is a dwelling house and that the Respondents are awaiting construction in the property, in my opinion, eight months' period would be reasonable. Though the time to vacate has been granted to the Appellant, it is clarified that upon hearing the Appellant on merits, I have not found any case whatsoever in favour of the Appellant and it is only out of indulgence that time to vacate has been granted.

5. Accordingly, the Second Appeal is dismissed. However, the Appellant is granted eight months' time from today to vacate the suit premises on the following conditions :-

(a) The Appellant will file an affidavit/undertaking in this Court within period of three weeks stating that who is in occupation of the premises with her and if there are any adult members occupying the premises, their affidavits/undertaking.

(b) Undertaking will specify that the deponent will vacate and hand over the possession of the suit premises to the Respondents on the expiry of eight months' period and will not create any third party rights or part with possession.

(c) If the affidavit/undertaking is not filed within three weeks from today, the decree shall become executable forthwith.

(d) The Appellant will pay the arrears as per the impugned judgment and decree to the Respondents within period of four weeks.

(N.M. Jamdar, J.)