

Sequeira

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

***SECOND APPEAL NO. 904 OF 2016
Along with
CIVIL APPLICATION NO. 1817 OF 2016***

Mr.Maruti Chandrakant Padalkar and another .. Appellants

Vs

Chimanlal Oswal Jain trust
through Bhabutmal Hirachandaji
Shaha Executive Trustee and others .. Respondents

Mr.Sanjiv Sawant, for Appellants.

Mr.S.M.Railkar, for Respondent Nos.1, 2, 4.

***Coram : N.M.Jamdar, J.
Date : 2 February 2018.***

Oral Order :

Heard learned counsel for the parties.

2. The learned counsel for Appellants on instructions, at the outset, states that if reasonable time to vacate the suit premises is granted, the Appellants will not press the appeal on merits. The learned counsel for the Appellants states that he has taken instructions from the Appellants to make the statement. In fact to enable the learned counsel for the Appellants to make statement, the

Appeal was adjourned till date. The Appellant No.2 is present in the Court. The Appellant no.1 the brother of Appellant No.2 though not present, a statement is made on behalf of Appellant No.1 that the Appellant No.2 has also agreed with the decision.

3. On the time to vacate, it is submitted that the Appellant is carrying out business of tailoring in the suit premises for almost thirty years which is not more than 50 sq.ft. The learned counsel for Respondent-Trust submitted that the suit was decreed in the year 2013, even the first appeal was dismissed in August 2016 and therefore, the Appellants should not be granted any time beyond July 2018, which according to the learned counsel for the Respondents is reasonable. Both the learned counsel after making their submissions on the period for time to vacate stated that Court may decide a reasonable period in the facts and circumstances.

4. Though the learned counsel for Appellants has not addressed the matter on merits, I have gone through the impugned judgments and I find that there is hardly any question of law raised in this Appeal and no fault can be found with both the impugned orders. The Appellants have not been able to demonstrate any legal right to occupy the suit premises belonging to Respondents.

5. Considering the fact that the Appellants are carrying out their tailoring business, which is stated to be their only source of

livelihood and considering the fact that even after the Appeal is dismissed the Appellant has already availed period of one and a half year, the request made by the learned counsel for the Appellants for two years time to vacate, cannot be granted.

6. I am of the opinion that considering the facts and period of one year and two months will be reasonable therefore, Appeal is disposed of with the following order-

(a). The Appellants will file an undertaking of affidavit that they alone are using the premises.

(b). The affidavit / undertaking will state that the Appellants will hand over peaceful and vacant possession of the suit property, on 2 May 2019 to the Respondents.

(c) The affidavit /undertaking to be filed within period of four weeks from today.

(d) If the undertaking is not filed, not only the decree will stand executable forthwith, but the Appellants shall be liable for action under Contempt of Courts Act.

7. Though the Appeal stands disposed of Appeal shall be listed on board, under the caption 'for directions' after period of four weeks

only to ensure compliance regarding filing of the undertaking. On that date both the Appellants shall remain present in the Court. Civil Application does not survive, hence disposed of.

(N.M.Jamdar, J.)