

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3527 OF 2018**

Ashok Babulal Desarda & Ors.] Applicants

Vs.

Balkrushna Ramakant Divte (deceased)]

through Lrs.]

Surekha Balkrishna Divte & Ors.] Respondents

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Mr. Shah Kayval, for Applicants.

Mr. A.B. Tajane, for Respondents No.1(A) to 1(C).

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CORAM : R.G. KETKAR, J.

DATE : 10TH APRIL, 2018.

P.C.

Heard Mr. Shah, learned Counsel for the applicants and Mr. Tajane, learned Counsel for respondents No.1(a) to 1(c).

2. The petitioners had initially instituted Civil Revision Application (ST) No.32724 of 217. In view of Section 7 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), section 115 is not applicable to the proceedings arising from the Courts constituted under the Provincial Small Cause Courts Act, 1887. In view thereof, leave to convert Civil Revision Application into Writ Petition was granted.

3. By order dated 12th March, 2018, Petition was dismissed and was kept for reporting compliance after three weeks i.e today. In the meantime, on

the oral application made by Mr. Shah, ad-interim order dated 21st February, 2018 was continued for a period of 8 weeks subject to petitioners and all adult family members using/residing in the suit premises filing usual undertaking.

4. The petitioners, Mr. Ashok Babulal Desarda, Mishrilal Gulabchand Desarda and Dilip Babulal Desrda have filed undertakings which are taken on record and marked “A Colly”. In paragraph 7 of the undertaking, it is stated by the petitioners that they accept correctness of the order and do not want to challenge the same. They have also undertaken to hand over vacant and peaceful possession of the suit premises to the respondents on or before 31st December, 2018. The petitioners have also agreed to pay Rs. 15,000/- per month from March, 2018 till the date of handing over possession or 31st December, 2018 whichever is earlier.

5. Mr. Shah assures that the petitioners will pay Rs. 15,000/- per month on or before 10th day of each succeeding month. Undertakings given by Mr. Ashok Babulal Desarda, Mishrilal Gulabchand Desarda and Dilip Babulal Desrda are accepted. The Petition is disposed of as not pressed. Mr. Shah states that Mr. Ashok Babulal Desarda is present in the Court. He has tendered photo copy of his PAN card which is taken on record and marked “B” for identification.

6. In view thereof, eviction decree shall not be executed up to 31st December, 2018. List the matter for reporting compliance on 7th January, 2019.

[R.G. KETKAR, J.]