

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

**APPEAL FROM ORDER NO.10 OF 2018
WITH
CIVIL APPLICATION NO.16 OF 2018**

Ms.Zeenat Shiraz Kassam & Ors. ... Applicants

IN THE MATTER OF:

Ms.Zeenat shiraz Kassam & Ors. ... Appellants

Vs.

Mr.Munis Anwarali Battliwala & Ors. ... Respondents

Mr.Anuj Narula with Shakeeb Shaikh i/b Jhangiani Narula & Associates for the Appellants

Mr.Sharan Jagtiani with Arun Panickar i/b Nitin Sopan Parkhe for Respondent Nos.4 to 6

Mr.Nilesh Gala i/b Law Square for Resp. No.7

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: FEBRUARY 5, 2018**

P.C. :

1. This appeal challenges the order dated 3.11.2017 thereby dismissing the Notice of Motion No.3427 of 217 in SC Suit No.2878 of 2017. The appellants are the original plaintiffs, who had filed suit for injunction and also declaration that the respondents, that is the defendants, shall not part with possession and shall not transfer or create any third party interest in the suit flat. The plaintiff No.1 is a sister of the respondents/brothers. She is a widow. Her claim is that she has been occupying the flat

alongwith her brothers and mother when she lost her husband in 1996.

2. Before opening the arguments, the learned Counsel for the respondents/defendants made a statement that the suit flat was a tenanted premises and it is surrendered to the Respondent No.7 / landlord by defendant No.5, the mother, on 13.1.2018. The learned Counsel for Respondent No.7/original defendant No.7 confirms this statement and submits that the landlord has been handed over vacant possession of the suit flat and is in exclusive possession of the suit flat from 13.1.2018. It is verified and also confirmed that from 3.11.2017 till today, neither this Court nor the civil Court has granted any interim injunction in favour of the appellants / plaintiffs during the pendency of this appeal. Thus, in view of this subsequent development, this Appeal from Order has become infructuous.

3. Mr.Narula, the learned Counsel for the appellants, the original plaintiffs, has submitted that the appellants were staying in the suit flat in one room and to that effect, some admissions are also given by the respondents and plaintiff No.1 also lodged criminal complaint against the respondent/brothers at Khar police

station and an offence under sections 341 and 506(2) of the Indian Penal Code was registered on 19.10.2017. He further submits that belongings of the appellants/plaintiffs are lying in the suit flat and they are not handed over to them. The learned Counsel for the respondents/brothers and mother as also the learned Counsel for the landlord deny the submissions made by the learned Counsel for the appellants.

4. Be that as it may, the learned Counsel may submit a list and the truthfulness can be verified and tested by the trial Court and appropriate order may be passed.

5. Considering the submissions of the learned Counsel for the appellants, as the suit is pending, the appellants/original plaintiffs may file application in respect of list of the articles which the appellants claim that they were lying in the suit premises and may seek appropriate orders from the Court.

6. Appeal from Order is dismissed accordingly. In view of the dismissal of the appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)