

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.725/2018

in

First Appeal No.56/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Vikas Y. Murudkar for the Applicant
Mr. Sanjay V. Palekar I/b. O. S. Kutty for Respondent No.1.

CORAM: K.K.TATED, J.
DATED : OCTOBER 3, 2019

P.C.

1 Heard. By this Civil Application, the Applicant is seeking stay to the operation and implementation of the judgment and decree dated 05.12.2017 passed by the Bombay City Civil Court at Mumbai in S.C.Suit No.965/2014 directing the Appellant to pay sum of Rs.10,000/- pm to the Respondent in respect of the occupancy charges of Flat No.301 admeasuring 395 sq.ft. carpet area situated on 3rd floor, A-Wing, Mary Elien CHS Ltd., Amboli, Andheri (West), Mumbai - 400058.

2 The learned counsel for the Applicant submits that this court by order dated 18.04.2018 had directed the Applicant to deposit 50% of the amount as per the order passed by the Trial Court, in this court. He submits that the Applicant is not in a position to pay 50% amount. Hence, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and decree.

3 On the other hand, the learned counsel for the Respondent has vehemently opposed the Civil Application. He submits that the flat is situated at a prime locality, which may fetch more than Rs.10,000/- pm. Therefore, there is no question of granting any stay in the matter.

4 Considering the submissions made by the learned counsel for the Applicant and the impugned judgment and decree which is in the form of money decree, I am of the opinion that the Applicant can be directed to deposit sum of Rs.5000/- instead of Rs.10,000/- pm as directed by the Trial Court, in the Registry of this court and/or pay directly to the Respondents and not to create any third party right, title and

interest in respect of the suit premises till hearing and final disposal of the First Appeal.

5 Hence, following order is passed:

a. Order passed by the Trial Court is modified to the extent of payment of amount i.e. the Applicant shall pay sum of Rs.5,000/- instead of Rs.10,000/-, directly to the Respondent or deposit in the Registry of this court, on or before 10th day of each month from November, 2019 during pendency of the First Appeal.

b. The Applicant to clear outstanding amount @ Rs.5000/- pm within eight weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

c. Liberty granted to the Respondent - Plaintiff to withdraw the said amount by giving personal undertaking, that they shall bring back the said amount along with interest as and when this court directs them to do so.

d. Pending the hearing and final disposal of the First Appeal the Applicant is restrained by an order of injunction

from creating any third party right, title and interest in respect of the suit property i.e. Flat No.301 admeasuring 395 sq.ft. carpet area situated on 3rd floor, A-Wing, Mary Elien CHS Ltd., Amboli, Andheri (West), Mumbai - 400058.

e. The Civil Application stands disposed of accordingly.

f. No order as to costs.

(K.K.TATED, J.)