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

**APPEAL FROM ORDER NO. 420 OF 2016
WITH
CIVIL APPLICATION NO. 547 OF 2016
IN
APPEAL FROM ORDER NO. 420 OF 2016**

The Cricket Club of India Limited ..Appellant/Applicant
vs.

Premier Furnishing & Decorating Pvt.Ltd. ..Respondent

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Mr. Vineet Naik, Senior Advocate a/w. Hetal Master I/b. Ashwin Ankhad & Associates for appellant/applicant.

Mr. Ram S. Apte, Senior Advocate a/w. Miss Saroj Ghatge I/b. Vigil Juris for respondent.

Mr. Ajeet Arenja – Director of respondent present.

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CORAM : M.S.KARNIK, J.

DATE : 7th JUNE, 2019

P.C. :

The challenge in this appeal is to an order dated 16/1/2016 passed by the Judge, City Civil Court, Mumbai, rejecting Notice of Motion No. 4562 of 2014 filed by the appellant.

2. The appellant - The Cricket Club of India Limited filed the suit against respondent No.1 who is tenant in respect of shop no.7. It is the contention of learned Senior Counsel for the appellant that the toilet block in dispute was essentially meant for user as a washroom for tenants in respect of shop no.7 and 7E. It is the contention of learned Senior Counsel that the respondent has unlawfully and illegally partially altered the user of toilet block and partly converted the same into a pantry and also constructed mezzanine floor. In his submission, this cannot be permitted. Therefore, the suit was filed for appropriate declaration and relief. The suit is of the year 2014. The Notice of Motion filed for restraining the respondent from using the said block was rejected by the impugned order dated 16/1/2016. It is not in dispute that the respondent is using the block partly as pantry and as a toilet block since 2014 at least.

3. Learned Senior Counsel for respondent, on instructions of respondent, submits that admittedly he is in occupation of the toilet block in the condition which it is at

present since the year 2014 and prior thereto. He submits on instructions that he will not change the user of the toilet block during the pendency of the suit and he will not make any further alterations and additions to the block as it exists and also undertakes not to create third party right till disposal of the suit. He further submits that he has no objection if the tenant of shop no.7 E uses the said block. In this view of the matter, as the Notice of Motion was rejected on 16/1/2016 and the suit is of the year 2014, in my opinion, the following order will meet the ends of justice :

ORDER

- (i) The undertaking of the respondent that he will not change the existing user of the block in question as it stands, is accepted.
- (ii) Further statement that he will permit the tenant of shop no. 7E to use the said block, is also accepted.
- (iii) Since the suit is of the year 2014 and admittedly as the respondent is using the toilet block since then, I see no reason to interfere with the order

passed by the trial Court. However, in the facts of the present case the trial Court is requested to dispose of the suit as expeditiously as possible, preferably within a period of one year from today.

(iv) Learned Senior Counsel, on instructions of the respondent, who is present in the Court, submits that his client will not take unnecessary and unwarranted adjournments before the trial Court and that he will co-operate in expeditious disposal of the suit and that he will not create any third party interest in the block.

(v) All contentions on merits are kept open.

4. The Appeal is disposed of.

5. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

(M.S.KARNIK, J.)