

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.734 OF 2019
IN
WRIT PETITION NO.2134 OF 2017

Mustak Hamid Shaikh ... Applicant

In the matter between

Mustak Hamid Shaikh ... Petitioner

Vs.

Umesh Jamanna Swami and another ... Respondents

Mr. Kunal Bhanage i/b. Vidhi Thaker for Applicant.

Mr. Nilesh Soni i/b. Mr. Prithvi Raj Singh for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : JULY 23, 2019

P.C. :

Heard Mr. Bhanage, learned Counsel for applicant and Mr. Soni, learned Counsel for respondent No.1.

2. This is an application for terminating the agency of the respondent No.1-landlord; discharging the Court Receiver, High Court, Bombay; and for directing the office of the Court Receiver to handover possession of a bungalow and common store room admeasuring 600 sq. ft. made by bricks wall / three portion that covered terrace thereof made by concrete sheet lying and being at C.T.S.No.655 Part, 102, Village Ambivali, Taluka Andheri situate at Bharadwadi, Behind Venus Tower, Opposite YWCA, J.P.Road, Andheri (West) Mumbai 400 058 (for short 'suit premises') to the applicant.

3. In support of this Application, Mr. Bhanage submitted that by order dated 15.02.2017 passed in Writ Petition No.2134 of 2017, this Court (Coram : N. M. Jamdar, J.) set aside the order dated 11.01.2016 in Marji Application No.54 of 2015, order dated 05.01.2017 in miscellaneous Application No.17 of 2016 and the judgment and decree

dated 09.04.2014 in L.E.&C.Suit No.62/80 of 2012 and restored the Suit to the file of the Small Causes Court Mumbai to dispose it of on merits. The Court Receiver was appointed in respect of the suit premises with direction to immediately take possession. The Court Receiver was to permit the petitioner (applicant herein) to remove articles and machineries from the suit premises by giving four weeks time to the applicant herein. The Court Receiver was directed to appoint the opponent herein as an agent of the Court Receiver and put him in possession thereof without payment of any royalty. The said appointment was subject to the outcome of L.E.&C. Suit No.62/80 of 2012.

4. Mr. Bhanage submitted that by order dated 21.08.2018, the learned trial Judge dismissed the Suit in default. No steps are taken by the opponent for restoration of the Suit. He submitted that as the possession was handed over by the applicant in pursuance of order dated 15.02.2017 passed by this Court, possession of the suit premises may be restored to the applicant.

5. On the other hand, Mr. Soni submitted that on 25.03.2019, opponent has filed Marji Application for recalling order dated 21.08.2018 thereby restoring the Suit to its original position. The said Marji Application is pending.

6. In view thereof, Civil Application is disposed of reserving liberty to the applicant to agitate the contentions raised in this Application as also press the reliefs claimed in this Application at the time of hearing of the Marji Application filed by the opponent. All contentions of the parties, in that regard, are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)