IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.411 OF 2018

Mrs. Shaila Suresh Boble ...Appellant
V/s.
Shri Jethalal Gopalji Thakkar @ Karia
& Ors. ...Respondents

....

Shri Sadashi N. Kadam, advocate for the appellant.
Shri Satish K. Kumbhar, advocate for the respondent Nos. 1 to 7.

....

CORAM : M.S.KARNIK, J.

DATE : 10th JUNE, 2019

P.C. :

1. Heard learned counsel for the appellant.

2. By this Appeal From Order, appellant challenged the order dtd.18/04/2018 passed by the Principal Judge, Bombay City Civil Court, rejecting the application filed by the applicant for transferring S. C. Suit No. 1863 of 2017, pending in Court Room No. 4 to the Court Room No. 2, where the execution proceeding in respect of the decree passed in S. C. Suit No. 4859 of 2004 is pending.

3. It is the contention of the learned counsel for the appellant that her husband was initially the tenant in respect of the suit

premises. A suit bearing S. C. Suit No. 4859 of 2004 came to be filed by the respondent/landlord against her husband, which was decreed on 24/10/2005.

4. Learned counsel for the appellant has come out with the case that her husband surrendered the tenancy right in the year 2000. Thereafter, the landlord has recognised the appellant as a tenant.

5. Learned counsel submitted that the execution proceedings in respect of the decree dtd. 24/10/2005 are pending before the Court Room No. 2. He would submit that as now the appellant has filed S. C. Suit No. 1863 of 2017 for declaration, it would be in the interest of justice that the suit filed by her and the execution proceedings be heard by one and the same court.

6. The learned trial court has rejected the application. I find no reason to interfere in the order passed by the trial court. It is seen that after filing of the execution proceedings, the appellant's husband had applied for setting aside the ex-parte decree. The executing court rejected the said notice of motion. Appeal From Order No. 487 of 2017 filed by the husband of the

appellant in this court also came to be dismissed by an order dtd.17/07/2017.

7. The appellant has already filed a notice of motion in S. C. Suit No.1863 of 2017 seeking appropriate interim reliefs. The same will decide on its own merits. The landlord is prosecuting the execution application before the executing court.

8. In these circumstances, if the rial court was of the opinion that there is no good ground for transfer of the appellant's suit before the court where the execution proceedings are pending, I do not find any error in the view taken by the trial court. Moreover, the trial court, apart from observing that no good grounds are indicated for transfer of the suit, has also observed that even if the possession is taken during execution, there is a provision for restitution under section 144 of the Code of Civil Procedure.

9. In this view of the matter, I do not find any reason to interfere with the order of the trial court.

10. Hence, the Appeal From Order is hereby rejected.

(**M.S.KARNIK, J.)**