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

**SECOND APPEAL NO. 418 OF 2019
WITH
CIVIL APPLICATION NO. 947 OF 2019
IN
SECOND APPEAL NO. 418 OF 2019**

Smita Sanjay Sabale & anr. ..Appellants

vs.

Chandrakant Keshav Amburle
(since deceased) through his LRs

1A. Arvind Chandrakant Amburle & ors. ..Respondents

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Mrs. Jai Kanade I/b. Ms. Shivani S. Samel a/w. Ms. Shruti
Tulpule for appellants.

Shri Harshad M. Inamdar for respondent Nos.3B to 3D.

Mr. Sameer S. Sabale, son of appellants present in Court.

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CORAM : M.S.KARNIK, J.

DATE : 17th JULY, 2019

P.C. :

The appellants are the original defendants. The present respondents – original plaintiffs filed a suit for possession of the suit property. The plaintiffs' claimed to be owners. According to the plaintiffs, the premises are required by them bonafide for their own use and occupation. It is further

stated that the defendants failed to pay the rent and therefore notice is issued under Section 106 r/w. 111(h) of the Transfer of Property Act for eviction. The trial Court decreed the suit. The First Appellate Court dismissed the Appeal. The Courts below concurrently found in favour of plaintiffs.

2. Learned counsel for the appellants invited my attention to the findings of the trial Court as well as the Appellate Court. It is her case that initially the plaintiffs had put the defendants in occupation of one room. Later on the appellants – defendants at their expense constructed a ground plus one storey structure wherein the defendants started running restaurant and permit room. Learned counsel for the appellants vehemently contended that an amount of Rs.3,50,000/- was expended by the appellants for construction of the suit premises. According to her, it was agreed that an amount of Rs.3000/- per month would be paid by the appellants to the respondents for use of the suit premises. By virtue of the expenses incurred by the appellants, it was agreed by the

respondents that they will execute a sale deed in favour of the plaintiffs. However, instead of executing a sale deed, the respondents issued a notice terminating the tenancy.

3. Learned counsel for the appellants urged that the Courts below erred in coming to the conclusion that the appellants are tenants in respect of the suit property. According to her, after the construction of the suit premises at their own expense and as the respondents agreed to execute a sale deed in their favour, the status of the appellants cannot be said to be that of 'tenants'. According to her, if the appellants are not tenants, then notice issued under Section 106 r/w. 111(h) of the Transfer of Property Act itself is illegal.

4. I have heard learned counsel for the appellants and learned counsel for the respondents. I have gone through the findings recorded by Courts below. Though learned counsel contended that the amount of Rs.3,50,000/- was spent for construction of the premises with the permission of respondents as against which respondents agreed to sell the property to the

appellants by executing sale deed ; but the pleadings on record indicate that the plea of appellants is that they paid an amount of Rs.3,50,000/- as sale consideration of the property and only sale deed was to be executed. Be that as it may, the factum of payment of Rs.3,50,000/- to the respondents or incurring expenses of Rs.3,50,000/- for construction cannot be said to be proved on the basis of evidence on record. There is no document of agreement of sale. There are no witnesses to the transaction. Having paid the entire consideration of the sale amount, there is not even a mere receipt relied upon by the appellants. The Courts below have concurrently found that the appellants failed to prove that they paid Rs.3,50,000/- for sale of the suit property in the year 1998. I find that there is nothing on record and/or no documents to establish the factum of payment of Rs.3,50,000/- to the respondents. Though it is the appellants claim that the respondents agreed to sell the suit property in the year 1998 for which entire consideration of Rs.3,50,000/- was paid, however, even till filing of the suit by the plaintiffs in the year 2005, no proceedings were filed by the appellants for

specific performance of the so called agreement. Surprisingly, even after the entire sale consideration is paid, the appellants continued to pay Rs.3,000/- per month which they contend is not rent but a payment to use the said premises. If in these circumstances the Courts below found that the case of appellants unbelievable, I do not see any reason to interfere with this well considered fact finding exercise. Moreover, the Courts below have concurrently found that the appellants required the premises bonafide for their own use and occupation. I do not see any reason to interfere with the concurrent findings of the Courts below holding that the appellants are tenants in respect of the suit premises and that the notice terminating the tenancy issued by the respondent – landlord is legal and valid. Further, no error can be said in the trial Court's order awarding the arrears of rent.

5. In this view of the matter, I see no reason to interfere with the concurrent findings recorded by the Courts below. The Appeal is dismissed.

6. At this stage, learned counsel for the appellants on instructions of the son of the appellants who is present in the Court submits that as the appellants are running business in the suit premises they may be granted a reasonable time to vacate the suit premises. She submits on instructions that the appellants are willing to file an undertaking that the appellants would vacate the premises on or before 31st January, 2021.

7. This request is opposed by learned counsel for the respondents. However, the request of appellants is reasonable as the appellants have a running business and are occupying the suit premises since 1982. They need some reasonable time to make alternate arrangements. On the appellants furnishing usual undertaking to this Court that they will vacate the suit premises on or before 31/1/2021, the decree not to be executed till 31/1/2021.

8. If an undertaking is not filed within a period of 2 weeks from today, the respondents to proceed with the execution.

9. In view of the dismissal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is also disposed of.

(M.S.KARNIK, J.)