

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION No. 2644 OF 2013

IN

FIRST APPEAL NO. 876 OF 2013

Chatarlal B. Jain ... Applicant

v/s.

Ramavadh R. Mishra & Anr. ... Respondent

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Mr. A. S. Karwande for the Applicant.

Mr. S. P. Srivastava for the Respondent.

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CORAM : K. K. TATED, J.

DATED : AUGUST 29, 2019

P.C.:

1. Heard the learned counsel for the parties.
2. By this Civil Application, Applicant/Defendant is seeking stay of judgment and decree dated 22nd April, 2013. passed by Bombay City Civil Court, at Bombay in S. C. Suit No. 5100 of 1999.
3. During the course of argument, the learned counsel Mr. A.S. Karwande for Applicant submits that, at present he is seeking to protect the possession of applicant in respect of the suit property i.e. Shop No. 3, situated at Survey No. 35A, Nehru Road, Near Municipal School, Santacruz (East), Mumbai - 400055.

4. Learned Counsel for the Applicant submits that in the present proceeding, the Respondents/Plaintiffs filed S.C. Suit No. 5100 of 1999 for possession of the suit property and other reliefs. He submits that, the Trial Court vide impugned judgment and decree dated 22nd April, 2013 directed Applicant/ Defendant to handover the possession of the suit premises to the Respondents / Plaintiffs within 3 months from the date of order.

5. The Learned Counsel for the applicant submits that, as on today the applicant is in possession of the suit premises. He submits that, the first appeal is already admitted by this Court. He submits that, pending the hearing and final disposal of the First Appeal, this Hon'ble Court be pleased to restrained the Respondent from taking the possession of the suit premises. He further submits that, the Applicant/ Defendant undertakes that he will not create any third party rights and interest in respect of the suit premises till the hearing and final disposal of First Appeal.

6. On the other hand, the learned counsel Mr. S. P. Srivastava appearing on behalf of the Respondent/ plaintiff submits that the plaintiff may be granted liberty to file application ,if, he so desire for compensation/ monthly rent in respect of the suit property.

7. Considering the submission, made by learned counsel for the Applicant, I am satisfied that Applicant has made out a case for following the order:

- a) The possession of Applicant in respect of the said property i.e. Shop No. 3, situated at Survey No. 35A, Nehru Road, Near Municipal School, Santacruz (East), Mumbai - 400055 is protected till the hearing and final disposal of First Appeal.
- b) Respondents are restrained by order of injunction disturbing the applicant/defendant's possession of the suit premises, till the hearing and final disposal of the First Appeal.
- c) Applicant also restrained by an order of injunction from creating any 3rd party right and interest in respect of suit property till the hearing and final disposal of the First Appeal.
- d) Liberty is granted to the Respondent/ Plaintiffs, if he so desire to make an application for monthly compensation in respect of suit property during the pendency of First Appeal.
- e) Civil Application is disposed of accordingly. No order as to costs.

(K. K. TATED, J)