

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

WRIT PETITION NO.7911 OF 2019

Laxmibai Ashok Solanki and Anr. ... Petitioners

Vs.

Umesh Gajanan Tapase and Anr. ... Respondents

.....

Mr. Dilip Bodake for the Petitioners.

Mr. Shailesh Chavan for the Respondent No.1.

.....

CORAM : M. S. KARNIK, J.

DATE : 28th AUGUST, 2019.

P. C.:

1. Heard learned counsel for petitioners and learned counsel for respondent No.1.
2. The petitioners are the original defendants who have suffered the decree of the Trial Court dated 6.3.2017. The Trial Court decreed the suit and directed the defendants to handover possession of the suit house to plaintiffs.
3. The defendants filed Regular Civil Appeal No.120 of 2017 before the First Appellate Court. The defendants filed an application for stay. The said application is rejected as no sufficient reasons have been indicated in the application as to why the judgment and decree of the Trial Court should be stayed.

4. Learned counsel for the petitioners would submit that as admittedly the petitioners are residing in the suit house, the issue whether the transaction in question is mortgage by conditional sale or an out and out sale is the subject matter of the decision in the Appeal. According to him though the Trial Court decreed the suit in favour of the plaintiffs, but the defendants have challenged the decree in the Appeal. As the defendants are in possession of the suit house it was necessary for the Appellate Court to have protected the possession of the defendants during the pendency of the Appeal.

5. Learned counsel for the respondents opposed the request made by the petitioners. He invited my attention to the findings of the Trial Court to submit that the Trial Court has upon considering the evidence on record come to the conclusion that the plaintiffs are entitled to the possession of the suit house. He would therefore submit that the Appellate Court has rightly rejected the application for stay.

6. Heard. No doubt the Trial Court has decreed the suit of the plaintiffs and directed the defendants to hand over the

possession of the suit house. It is not disputed that pursuant to the transaction entered into between the plaintiffs and the defendants, it is the defendants who are in possession. The issue whether the transaction in question is mortgage by conditional sale or an out and out sale will be decided by the Appellate Court on merits. However as the petitioners are in possession, it is necessary to protect the possession of the petitioners during the pendency of the Appeal.

7. The Petition is therefore allowed. The impugned order of the Appellate Court is set aside. The petitioners are not to be dispossessed during the pendency of Regular Civil Appeal No.120 of 2017. The Appellate Court is requested to hear the Appeal on its own merits and in accordance with law preferably within a period of six months from today. It is made clear that the present order is limited to protecting the appellants during the pendency of the Appeal and the Appellate Court will not be influenced by any of the observations made in this order while hearing the Appeal on merits.

(M. S. KARNIK, J.)