

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL APPLICATION NO. 269 OF 2019****IN****CIVIL REVISION APPLICATION NO. 30 OF 2019****Kalawati Ashok Kumar Parmar & Ors. Applicants****VERSUS****Sharad Dattatraya Tapray & Ors. Respondents**

Ms.Ketki Gadkari for the Applicants.

Mr.Rhishikesh Mukund Pethe for the Respondents.

CORAM : R.D. DHANUKA, J.**DATE : 22nd JULY, 2019****P.C.**

By this civil application, the applicants have prayed for modification of the order dated 12th July, 2019 passed by this court rejecting the civil revision application filed by the applicants and confirming the decree passed by the two courts below.

2. Learned counsel appearing for the applicants had prayed for stay of the execution of the impugned decree passed by the two courts below and agreed to file an undertaking within one week from the date of the said order. Based on such undertaking rendered across the bar and subject to filing an undertaking in writing, this court by an order dated 12th July, 2019 stayed the operation of the decree passed by the two courts below for the period of six weeks.

3. By this civil application, the applicants have agreed to vacate the suit premises within a period of twelve months and seeks modification

of the said judgment and order dated 12th July, 2019. This civil application is vehemently opposed by the learned counsel appearing for the respondent no.1. During the course of the arguments, Ms.Gadkari, learned counsel appearing for the respondent submits that her client may be allowed to vacate the suit premises on or before 31st December,2019 on the condition that her client shall furnish an undertaking not to part with possession of the suit premises or create any third party rights during this period and would handover the vacant possession thereof on or before 31st December,2019 or even earlier if her client does not want to continue to occupy till 31st December, 2019. Undertaking is accepted. She states on instruction that applicants do not wish to challenge the judgment of this court dated 12th July, 2019 before any court of law. Statement is accepted.

4. In view of the undertaking rendered by the learned counsel appearing for the applicants across the bar and having undertaken to file an undertaking in writing to the effect that the applicants would not create any third party rights or would part with possession of the possession and would vacate the suit premises on or before 31st December,2019, the applicants are permitted to continue to occupy the suit premises till 31st December,2019.

5. It is further stated by the learned counsel for the applicants that except the applicants, nobody else is in possession of the suit premises in question. Statement is accepted.

6. The applicants are directed to pay the rent to the respondent no.1

at the same rate at which the applicants have been depositing before the trial court subject to the rights of the respondent no.1 to claim the higher amount based on the claim for *mesne* profit.

7. The respondent no.1 is permitted to withdraw the amount deposited by the applicants so far in the trial court towards interim rent unconditionally. The trial court to permit the respondent no.1 to withdraw the said amount within one week from the date of furnishing an authenticated copy of this order.

8. A copy of the undertaking shall be served upon the respondent's advocate simultaneously.

9. It is made clear that if the applicants do not furnish the undertaking within one week from today or do not serve a copy of the undertaking upon the respondent's advocate simultaneously or commit any breach of undertaking, applicants would handover vacant possession of the suit premises to the respondent no.1 forthwith upon such breach if committed.

10. The order dated 12th July, 2019 stands modified to this extent. Civil application is disposed of on aforesaid terms. No order as to costs.

[R.D.DHANUKA, J.]