

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

**APPEAL FROM ORDER NO.940 OF 2016
WITH
CIVIL APPLICATION NO.1175 OF 2016
IN
APPEAL FROM ORDER NO.940 OF 2016**

Mohd. Sadiq S/o. Haji Inayat Mohammed ...Appellant
V/s.

Mohammed Iqbal S/o. Haji Inayat Mohd.
& Ors. ...Respondents

....
Shri S. P. Srivastava, advocate for the appellant.

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CORAM : M.S.KARNIK, J.

DATE : 18th JUNE, 2019

P.C. :

1. The present appeal is filed by the original defendant No. 1.
2. The appellant claims to be the owner of Noor Hostel.
3. According to learned counsel for appellant, the said hostel was given to the respondent No. 3 for running the business as a conductor.
4. It is the case of the respondent No. 1 that he is the real brother of the appellant. The respondent No. 1 is in possession

of Room No. 112 situated on the first floor and Room No. 206 situated on the second floor of the hostel. According to the respondent No. 1 the appellant was trying to dispossess the respondent No. 1 without following the due process of law and threatening to disconnect the water supply and electricity connection. There is no dispute that the appellant and the respondent No. 1 are real brothers.

5. It is the contention of the learned counsel for the appellant that the respondent No. 1 entered into the premises as a customer and not as a brother. Therefore the respondent No. 1 has to pay the charges for occupying the rooms. The respondent No. 1 failed to pay the charges and therefore the appellant was justified in proceeding against the respondent No. 1.

6. The suit is filed by the respondent No. 1 for declaration that he should not be dispossessed without following the due process of law.

7. The trial court by a reasoned order restrained the appellant from disconnecting the water connection and electricity supply and dispossess the respondent No. 1 from the

suit premises without following the due process of law.

8. I have gone through the order passed by the trial court.

9. Prima facie it appears that there is nothing on record to show that the respondent No. 1 entered the suit premises as a customer and was obliged to pay the room charges. Beside on this question the appellant has to lead evidence during trial. Respondent No. 1 is the brother of appellant.

10. In this view of the matter, there is no reason to interfere with the order passed by the trial court partly allowing the notice of motion. I do not find any merit in this appeal. The same is rejected with no order as to costs.

11. In view of the rejection of the appeal, nothing survives in the Civil Application. Civil Application is disposed of accordingly.

(M.S.KARNIK, J.)