

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13664 OF 2017

M/s.Shiv Sabari Developers	.. Petitioner
Vs.	
Mrs.Anita Wd/o. Ashok Joshi and anr.	.. Respondents

Mr.Aniruddha A.Sapre a/w Ms.Amrita B. Singh & Ms.Priyanka Kadne, for the Petitioner.
Mr.R.Mishra I/b Mr.Ashok Saraogi, for Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE :18th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioner.

2. The petitioner is original defendant No.2. Respondent No.1-plaintiff filed the Suit restraining the defendants from disturbing her possession in the suit room. During the course of Contempt Proceedings filed in this Court, the suit premises were vacated by the plaintiff. In view of Consent Terms filed in another Suit, the plaintiff sought

amendment in the Suit and prayed for a declaration that she is entitled for permanent alternate accommodation in lieu of the suit room. The trial Court allowed the application for amendment. Writ Petition No. 13352 of 2017 filed against the order passed by the trial Court allowing application for amendment is already rejected today by a separate order.

3. Respondent No.1 therefore filed an application that in view of the Suit having rendered infructuous and as the possession of the suit room has been handed over to the defendant No.2, Suit itself has become infructuous and therefore, the plaintiff now is without any cause of action and therefore plaint needs to be rejected.

4. The trial Court having allowed the application for amendment. According to the trial Court as the relief of permanent alternate accommodation is sought, it cannot be said that the Suit has become infructuous. I see no reason to interfere with the order of the trial Court. The relief of

permanent alternate accommodation very much survives. It cannot be said that the Suit has become infructuous. The present Petition is therefore dismissed.

5. In view of pendency of these Petitions, the petitioner could not file reply to the Notice of Motion No. 2805 of 2017 in which the trial Court has passed 'No Reply' order. In the interest of justice, the petitioner is permitted to file reply to the Notice of Motion. If the petitioner files the reply on or before 10/10/2019, the trial Court to take reply on record. Learned Counsel for the plaintiff has no objection if the reply is taken on record.

(M.S.KARNIK, J.)

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