

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 2645 OF 2021
IN
FIRST APPEAL (ST.) NO. 16917 OF 2021**

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1. Mr. Sanjay Balwantrao Doshi
& Anr. ... Applicants/Appellants

Versus

Asiatic Co-operative Housing Society
Limited ... Respondent

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Mr. Mahindra Pandey a/w. Mr. Rahul R. Tiwari, Advocate for
Applicants/Appellants.

Mr. Rajesh Jain a/w. Mr. Rohit Jain i/b Legal Juris Advocate for the
Respondent.

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CORAM : N.J. JAMADAR, J.
DATE : 4th October, 2021

PER COURT:

1. Heard the learned counsel for the applicants-appellants and
the learned counsel for the respondent.

2. This application is preferred seeking stay to the execution,
operation and implementation of the judgment and decree in S.C.
Suit No.2528 of 2013 passed by the learned Judge, City Civil Court,
Greater Mumbai, whereby the defendants-applicants have been
declared to be the trespassers and directed to hand over possession
of the suit garage to the plaintiff-respondent within one month
from the date of the said decree.

3. Mr. Pandey, the learned counsel for the applicants submits

that the applicants-defendants were not provided an effective opportunity of hearing and the suit went virtually undefended. The suit garage was acquired by the applicants-defendants for a valuable consideration. Thus, the applicants would suffer irreparable loss, in the event the decree is executed.

4. In opposition to this, the learned counsel for the respondent-plaintiff would urge that the claim now sought to be made by the applicants that effective opportunity of hearing was not provided to the applicants is belied by the record. The applicants did participate in the suit and even filed affidavits of evidence. Despite ample of opportunities, the applicants did not turn up for the arguments and eventually the suit came to be decreed by a reasoned order. Since the applicants have no semblance of title to the suit garage, the application for stay deserves to be rejected, submitted Mr.Jain, learned counsel for the respondent.

5. Evidently, the claim of the applicants is rested on the Deed of Transfer/Release, dated 20th October 2012, which the trial court has found to be null and void. However, the fact remains that the applicants have been in possession of the suit garage. The question of nature of possession thereof thus warrants adjudication. Arguable questions arise as regards the legality, propriety and

correctness of the impugned judgment. Therefore, I am impelled to stay the execution and operation of the impugned decree.

6. At the same time, since the applicants have been declared to be trespassers and, consequently, in unlawful occupation of the suit garage, it would be expedient, in the interest of justice, to direct the applicants to pay compensation towards the occupation of the suit garage.

7. In the totality of the circumstances, it would be appropriate to direct the applicants to deposit compensation at the rate of Rs.10,000/- per month from the date of the suit till date, and continue to deposit the compensation at the said rate, with half yearly intervals, till the disposal of this appeal.

8. Hence, the following order :

ORDER

(i) The application stands allowed in terms of prayer clauses (a) and (b), subject to deposit of compensation for occupation of the suit garage at the rate of Rs.10,000/- (Rupees Ten Thousand Only) per month from the date of institution of the suit, till date.

(ii) The arrears of compensation be deposited in this Court within a period of one month from today.

(iii) The applicant-appellant shall continue to deposit the compensation at the aforesaid rate, at half yearly intervals, till the disposal of this appeal.

The application stands disposed of.

(N.J. JAMADAR, J.)

Shraddha Talekar, PS