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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2747 OF 2021
IN
FIRST APPEAL (ST.) NO. 17965 OF 2021

Mr. Dilip Aba Gawade

...Applicant

vs.

Motiram Aba Gasade

Since deceased through L.Rs.

1(a) Mr. Nitin Motiram Gawade

...Respondent

Mr. Aniket Ranade for applicant.

Mr. Vijay Kokitkar for respondent No.1(a).

CORAM : N. J. JAMADAR, J.

DATE : 26th OCTOBER , 2021

P.C.:

1. Heard the learned counsels for the parties.

2. This is an application for stay to the execution, operation and implementation of the decree passed in Counter Claim No. 3 of 2013 dated 14th July 2021 by the learned Judge, City Civil Court, Dindoshi, Mumbai, whereby the appellant-defendant is ordered to hand over vacant possession of the suit property which consists of a room being Room No. 191½, situated at Plot No. 387, Sanjeevani CHS Ltd., Jawahar Nagar, Golibar, Khar (East), Mumbai 400 055 to the respondent-plaintiff to the counter claim, within a period of three months thereof.

3. Heard the learned counsels for the appellant-judgment debtor and

the respondent/plaintiff.

4. The learned counsel for the appellant submits that the appellant had all along been in possession of the suit room and the appellant has a fair chance of success in the appeal.

5. In the event, the appellant is made to vacate the suit room, the appellant will suffer irreparable loss. Hence, it is necessary to protect possession of the appellant during the pendency of the appeal.

6. In opposition to this, the learned counsel for the respondent-plaintiff to the counter claim submitted that the appellant has no semblance of title over the suit room. Nor the appellant can legitimately claim right to possess the suit room. Hence, the appellant's possession cannot be protected. In the alternative, if the execution of the decree is stayed, the appellant be directed to deposit the compensation of Rs.10,000/- per month for the unlawful occupation of the suit room.

7. Indisputably, the appellant has been in possession of the suit room. The legality, propriety and correctness of the impugned judgment warrants consideration. If the decree is executed, in the intervening period, the appeal may be rendered infructuous. Hence, it is necessary to protect the possession of the appellant. At the same time, the interest of the respondent is required to be adequately protected. The appellant would thus be liable to pay compensation for unlawful occupation of the

suit room till the disposal of the appeal. Having regard to the location of the said room, the nature thereof and the situation in life of the parties, it may be expedient to direct the appellant to deposit the compensation @ Rs.6,000/- per month from the date of the decree and continue to deposit the same, at the quarterly intervals.

8. Hence, the following order :

ORDER

- (i) The application stands allowed.
- (ii) The execution, operation and implementation of the decree passed in Counter Claim No. 3 of 2013, dated 14th July 2021 stands stayed, till the final disposal of the appeal, on the condition of deposit of the compensation at the rate of Rs.6,000/- per month from the date of the decree, in this Court, within a period of four weeks from today, and, continue to deposit the compensation, at the said rate, at the quarterly intervals.

(N. J. JAMADAR, J.)