

rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 373 OF 2018

IN

FIRST APPEAL NO. 116 OF 2018

IN

SUIT NO. 3280 OF 2009

Mrs.Snehalata Balakrishna Salian

.....Applicant/Appellant
(Org.Defendant)

V/s.

Mr. Shankar Koosa Kunder

.....Respondent
(Org.Plaintiff)

Mr. K. B. Adyanthaya, Advocate for the Applicant/Appellant.

Ms. Sapna Rachure, Advocate for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 29th AUGUST, 2022.

P.C.

1. Heard. Perused the Civil Application, affidavit in reply by the respondent as well as rejoinder filed on behalf of the applicant.

2. Learned Advocate for the applicant submits that since an issue was framed with respect to the suit being barred by limitation and that there is already a release deed executed by respondent, the respondent shall not have any right with respect to the suit flat. Learned Advocate for the respondent submits that the respondent has succeeded in the suit and so far as issue of limitation is concerned it is specifically answered in the negative. The learned Advocate for the respondent further submits that the release deed is null and void and is an unregistered document. All these aspects will be decided at the time of final hearing of the Appeal. Considering the fact that the Appeal is admitted, it will be necessary to protect the rights of the applicant subject to certain conditions.

3. Learned Advocate for the applicant states that though it is not stated in his application and/or in the affidavit in rejoinder filed in the Civil Application, he states on instructions that the suit flat though was granted on leave and license basis upto 9th March 2022, the suit flat is vacated by the concerned licensee and the suit flat is vacant since April 2020. In such circumstances he states that the applicant is ready to deposit 50% of the license fees calculated upto March 2022, which is comes to Rs.3,15,000/-. He states that the applicant shall deposit the said amount within a period of six weeks from today. He further states on instructions that within a

period of three months from today he shall find some licensee in the suit flat and execute leave and license agreement which shall be registered. After registering the leave and license agreement, he shall intimate the Advocate for the respondent with regard to the same and shall also handover copy of the leave and license agreement.

5. Learned counsel for the applicant further states that from the license fees received as per the proposed leave and license agreement he shall deposit 50% of the license fees in this Hon'ble Court on or before 15th day of every calendar month. He further also states that in the event the applicant is unable to find any licensee within a period of three months from today, the respondent will be at liberty to bring in interested party for the purpose of executing leave and license agreement and accordingly the learned counsel for the respondent shall intimate the learned counsel for the applicant with respect to the details of the proposed licensee. Accordingly required leave and license agreement shall be executed with the party suggested by the respondent and 50% of the license fees shall be deposited by the applicant in this Court monthly after registering the leave and license agreement.

6. Learned Advocate for the respondent on instructions states that the respondent is agreeable for this arrangement.

7. Since both parties have agreed for this arrangement it goes without saying that the applicant as well as respondent shall cooperate with each other for the purpose of allowing the proposed licensee to inspect the suit flat for the purpose of execution of the leave and license agreement.

8. In view of the aforesaid mutually agreed arrangement following order is passed in presence of both the parties :

(i) Pending the hearing and final disposal of the appeal there shall be interim stay to the execution and operation of the judgment and decree dated 29th November 2017 passed by the Learned Judge, City Civil Court, Greater Mumbai in Suit No. 3280 of 2009 to the extent of part of the operative order in Clauses (2), (3) and (4) subject to the following conditions :

(a) The applicant shall deposit an amount of Rs. 3,15,000/- in this court within a period of six weeks from today.

(b) The applicant shall execute and register leave and license agreement in the name of the applicant with the proposed licensee with respect to the suit flat within the period of three months from today.

(c) On execution of said leave and license agreement, as stated in clause (b) above, the applicant shall deposit 50% of the license fees monthly, as per the proposed leave and license agreement on or before 15th day of every calendar month.

(d) In the event the applicant is unable to find any licensee and is unable to execute leave and license agreement within a period of three months from today, then the respondent shall be at liberty to find an interested party, for the purpose of executing leave and license agreement and shall through his Advocate intimate the applicants' Advocate. In such event both parties shall cooperate with each other for the purpose of execution and registration of such leave and license agreement.

(e) In the event of execution of such leave and license agreement as per clause no.(d) above, the applicant shall deposit 50% of the licence fees monthly, in this court on/or before 15th day of every calendar month.

(f) The respondent is at liberty to withdraw the amount that shall be deposited by the applicant as per clause (a) above, as well as clause (c) or (e) above, on furnishing usual

undertaking thereby stating that the entire amount withdrawn by the respondent shall be brought back to this court with interest at the prevailing rate, in the event the first appeal is decided in favour of the applicant.

(g) So far as clause (5) of the operative part of the impugned judgment and order is concerned, respondent shall be at liberty to initiate the necessary inquiry for mesne profits, if so desired. However, the final order if any passed in said inquiry shall not be executed during the pendency of this first appeal.

- (ii) Civil Application stands disposed of in the above terms.
- (iii) Needless to mention that in case of any difficulty in execution of leave and license agreement, the parties will be at liberty to apply for modification, of this interim order, only to that extent.

[GAURI GODSE, J.]