

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

**APPEAL FROM ORDER NO.360 OF 2022
WITH
INTERIM APPLICATION NO.2528 OF 2022
IN
APPEAL FROM ORDER NO.360 OF 2022**

Smt. Usha Shridhar Khanwilkar
and Ors.

.... Applicants

Versus

Willingdon Sports Club

.... Respondent

...

Mr. Dhananjay C. Pathak for the Applicants.

Ms Hubab Sayyed i/b. Thakordas and Madgavkar for Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 5th JULY, 2022.

P. C. :-

1. With consent, heard finally at the stage of admission.
2. The Appellants, who shall be hereinafter referred to as ‘the Defendants’ have challenged the order dated 18/02/2022 passed by the learned Judge, City Civil Court, Greater Mumbai, dismissing the Notice of Motion No.520 of 2021 in S.C. Suit No.9088 of 1994.
3. Heard Mr. Dhananjay Pathak, learned counsel for the Defendants and Ms Hubab Sayyed, learned counsel for the Plaintiff. I have perused the records and considered the submissions advanced by

the learned counsel for the respective parties.

4. The Respondent, hereinafter referred to as the 'Plaintiff' has filed a Suit for eviction on the ground that the Defendants have trespassed in the suit premises. The Plaintiff has also sought a relief of perpetual injunction and mesne profit. The Defendants claimed that they are protected tenants in respect of the suit premises.

5. The records indicate that the evidence of the Defendants was recorded on 07/10/2017. The matter was listed for further evidence thereafter. The Defendants had applied for witness summons, which was allowed on 14/11/2019. Accordingly, summons was served on Dr. Malpani. The Defendants sought adjournment time and again and hence by the impugned order dated 28/01/2020 the learned Judge closed the defence evidence. Being aggrieved by this order, the Defendants have filed this appeal.

6. Learned counsel for the Defendants submits that this witness is necessary to prove the health condition of the original Defendant. As noted above, the suit is for eviction on the ground that the Defendants have trespassed whereas defense is that the Defendants are protected tenants.

7. Learned Judge has observed that the evidence of Dr. Malpani is not necessary to decide the controversy between the parties. Learned counsel for the Defendants has also not been able to demonstrate the relevancy of evidence of Dr. Malpani. The records indicate that the Suit is pending since 1994. The Plaintiff's evidence was concluded some time in the year 2016. The evidence of DW1 was concluded on 29/08/2019. The records indicate that the Defendants had sought adjournment from time to time and there was absolutely no progress in the Suit since August-2019. Learned Judge was therefore justified in holding that the Defendants are only trying to delay and protract the matter.

8. Under the circumstances, I am not inclined to interfere with the impugned order. Hence, the appeal is dismissed. However, leave is granted to the Defendants to place on record certified copy of Exhibit 34 collectively within a period of two weeks from the date of this order. Considering that the Suit is pending since 1994, the Trial Court is directed to dispose of the same within a period of six weeks from the date of receipt of copy of this order.

9. Pending application (s), if any stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)