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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 163 OF 2021**

MS. PAYAL TURAKHIA D/O ANIL TURAKHIAAPPLICANT

V/s.

MR. KIRAN TURAKHIA AND OTHERSRESPONDENTS

**Mr. J. A. Udaipuri i/b Udaipuri & Co. Advocate for the Applicant
Mr. Bahraiz F. Irani a/w Firdause Irani a/w Afrin Dalal i/b Irani &
Co. for Respondent nos. 1 & 2**

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 28, 2022.

P.C.:

1) Heard Shri. Udaipuri, learned counsel for Applicant-Defendant.
Respondent-Plaintiff initiated S.C. Suit (Lodging) No. 5419 of 2020
before the City Civil Court, Mumbai with following reliefs:

A. That this Hon'ble Court be pleased to declare that the Defendants are rank trespassers upon the said Property i.e. all that piece and parcel of Flat No. C/50, 4th floor, Indradeep Society, 171 LBS Marg, Ghatkopar (W.), Mumbai 400 086 and are in illegal use, occupation and possession thereof,

B. That this Hon'ble Court be pleased to pass a permanent

order and injunction restraining the Defendants acting by themselves and/or through its servants, agents, representatives or any other person acting for and on behalf of the Defendants whether claiming under the name of the Defendants or any other name, or any person claiming through by or under the Defendants from in any other manner interfering with the peaceful use, occupation and possession of the Plaintiffs to the said Property being Flat No. C/50, 4th floor, Indradeep Society, 171 LBS Marg, Ghatkopar (W.), Mumbai 400 086,

C. That pending the hearing and final disposal of the Suit, the Defendants acting by themselves and/or through their servants, agents, representative and/or otherwise be restrained by an order and injunction from:

(i) taking any steps to remove the Plaintiffs belongings kept at the said Property more particularly the three cupboards kept under lock and key at the said Property being Flat No. C/50, 4 floor, Indradeep Society, 171 LBS Marg, Ghatkopar (W.), Mumbai 400 086;

(ii) preventing the Plaintiffs from freely using, occupying, possessing and/or accessing the said property being Flat No. C/50, 4th floor, Indradeep Society, 171 LBS Marg, Ghatkopar (W.), Mumbai 400 086 or any portion thereof, in any manner whatsoever;

(iii) in any manner dealing with or alienating or creating any third party rights or interests and/ or parting with

possession to any third party except the Plaintiffs and/or to induct any third party and/ or carrying out repairs, additions and alterations to the said Property and/or disposing of the said property being Flat No. C/50, 4th floor, Indradeep Society, 171 LBS Marg, Ghatkopar (W.), Mumbai 400 086;

D. That pending the hearing and final disposal of the present suit the Defendants be directed to pay compensation to the Plaintiffs a sum of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand) per month towards illegal and unauthorized occupation of the said Property towards necessary outgoings and taxes and the loss of income caused to the Plaintiffs from 31st December 2018 to the present date and until the proper adjudication and disposal of the present suit

E. That necessary Orders be passed for awarding mesne profits after adjudicating upon the same as per the Code of Civil Procedure, 1908;

F. Ad-interim reliefs in terms of prayer clause (A) to (E) be granted;

G. That costs of the suit be provided for;

H. For such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present suit.

- 2) Petitioner has come out with a plea that he being a gratuitous tenant, proceedings before the City Civil Court are not maintainable for want of jurisdiction and as such, took out Notice of Motion No. 36/2021. Said Notice of Motion is rejected vide impugned order dated 15/02/2021. As such, this Petition.
- 3) If the pleadings in the written statement are appreciated, it can be inferred that Suit is not maintainable for want of jurisdiction. As such, Plaint should have been returned/rejected for presentation of the same before the appropriate Court.
- 4) Counsel for Respondent-Plaintiff has supported the order impugned.
- 5) Considered submissions.
- 6) It appears that Applicant-Defendant has invoked provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of Plaint and has sought support from the pleadings in the written statement which in any case is not permissible. It is settled position

of law that for deciding an Application under Order VII Rule 11(a) of CPC, Court is not required to appreciate the defence of the Applicant-Defendant.

7) Considering the nature of relief claimed in the Plaint, Court below has rightly held that even if the Applicant is admitted to be an gratuitous tenant, there are other reliefs claimed by Respondent-Plaintiff in the Plaint which can be adjudicated by the City Civil Court and the jurisdiction of the City Civil Court is not ousted. Plaint as such, cannot be rejected in part. That being so, no case for interference is made out. Application fails, stands dismissed.

[NITIN W. SAMBRE, J.]