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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2321 OF 2021**

Oves Ahmed Siddiqui

...Petitioner.

V/s.

Pervez M. Batliwala and ors.

...Respondents.

Dr. Abhinav Chandrachud, Mr. Shrey Fatterpekar and Mr. Mittal Munoth i/b Mr. Chandrachud i/b Mr. Rajendera Rathod for the Petitioner.

Mr. Karl Tamboly a/w. Mr. Jamsheed Master i/b Ms Natasha Bhot for Respondent Nos.1 to 6g.

CORAM : N.R. BORKAR, J.
DATE : 08.03.2022.

P.C. :

1. This petition takes an exception to the order dated 02.06.2021 passed by the Appellate Bench of the Small Causes Court, Bombay below Exhibit-12 in Miscellaneous Appeal No. 429 of 2019.

2. The respondent Nos.1 to 6 herein had filed the suit for eviction and possession against the respondent No.7. The Trial Court dismissed the suit. The respondent Nos.1 to 6 filed appeal against the judgment and order of the Trial Court dismissing the suit. The Appellate Court allowed the appeal and decreed the suit.

The said decree was put into execution and warrant of possession was issued.

3. The petitioner, who claims to be in possession of cabin ad-measuring about 150 sq. ft in suit premises had filed an application before the Executing Court purportedly under Order 21, Rule 97 read with 99 of the Code of Civil Procedure. The Executing Court dismissed the said application by order dated 25.09.2019. The petitioner filed the appeal against the order dated 25.09.2019 being Miscellaneous Appeal No. 429 of 2019. The said appeal is still pending before the Court of Small Causes (Appellate Bench).

4. According to the petitioner, during the pendency of appeal and in violation of the order passed by this Court dated 16.04.2021 in Suo Motu PIL No.1 of 2021, the respondent Nos.1 to 6 got the decree executed on 27.04.2021. The petitioner had thus filed an application at Exhibit-12, *inter alia*, praying that *status quo* as existing on the date of filing the appeal be restored. The learned Appellate Court rejected the said application by the order impugned.

5. By order dated 30.6.2021, this Court (Coram M.S. Karnik, J.) directed the respondents not to deal with or dispose of or create any third party interest or otherwise part with the possession of the property in question.

6. The learned counsel for the petitioner, on instructions, seeks leave to withdraw the present petition with liberty to file an application for restoration of possession after the decision of the appeal. He submits that the hearing of appeal may be expedited and interim order passed by this Court be continued till the decision of appeal.

7. Considering the facts and circumstances of the case, leave as prayed for is granted. Writ Petition is disposed of as withdrawn with liberty to the petitioner to file an application for restoration of possession after the decision of appeal.

8. As regards continuation of interim order passed by this Court, the petitioner is at liberty to file application in that respect before the Appellate Court. However, the interim order passed by this Court dated 30.06.2021 shall remain in operation for a period of two weeks from today.

9. The Appellate Court shall endeavour to decide the appeal filed by the present petitioner on its own merits, as early as possible and in any case within a period of six months from the date of receipt of copy of this order.

10. Needless to mention that the Appellate Court shall decide the application / ad-interim application, on its own merits and without being influenced by the interim order passed by this Court.

[N.R.BORKAR, J.]