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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3816 OF 2016
IN
FIRST APPEAL NO. 1410 OF 2013**

Shri Ganesh Motilal Patel & Ors Applicants
In the matter between
Smt Surekha Sandeep Khopkar Appellant
V/s.
Shri Ganesh Motilal Patel & Ors. Respondents

Mr. Vijay H Kantharia, a/w Shubhada Salvi, i/b Leena Patil, Advocate for the Appellants.

Mr. Pradeep J Thorat, Advocate for the Applicants/Respondents.

Mr Niranjan Chavan, representative of Court Receiver present.

CORAM : GAURI GODSE, J.

DATE : 19th October, 2022.

P.C.

1. This Application is filed by the Respondents in First Appeal - the Original Decree holders seeking modification of Order dated 16.1.2014 passed by this Court in Civil Application No. 3774 of 2013. Civil Application No. 3774 of 2013 was filed by the Appellant for stay of the execution and operation of the impugned Judgment and Decree. By Judgment and Decree impugned in the First Appeal, Suit filed by the present Applicants was decreed and the Appellant was directed to hand over the possession of the suit premises to the present Applicants.

2. In the present Application prayer is also made for Injunction

restraining the Appellant from creating any third party interest and parting with possession of suit premises.

3. By order dated 7th July 2017, by consent prayer clause (b) of this application is allowed. Prayer clause (b) reads thus:

“b. Pending the hearing and final disposal of the present First Appeal the Appellant, his Agents, Servants and any person claiming through him be restrained by an Order of Injunction from parting with possession and creating any third party right of any nature whatsoever in respect of the suit premises i.e Room No. 159 admeasuring 300 sq. ft., Building No. 20 situated at Motilal Nagar No.1, Goregaon(West), Mumbai – 400 104. ”

4. Considering the grievance made by the Applicants, by the same order Court Receiver was directed to make a report, as to who is in actual physical possession of the premises. Pursuant to the said directions, Court Receiver’s report No. 136/2017 is filed on record. The said report says that the Appellant is found in possession of the suit premises.

5. After arguing, for sometime, Mr Thorat learned Counsel for the Applicants seeks leave for not pressing prayer clause (a) of the Application with a liberty to file a fresh Application. Such leave can be granted with a liberty to take out appropriate application as permissible in law.

6. Learned Counsel, Mr. Vijay H Kantharia, for the Appellant fairly states that he has no objection if earlier order dated 7th July 2017, thereby granting interim relief in terms of prayer clause (b) is continued during the pendency of the First Appeal.

Hence, following order is passed:-

(i) The Civil Application stands dismissed with respect of prayer clause (a) as not pressed, with liberty to the Applicants to take out a fresh application as permissible in law.

(ii) There will be interim relief in terms of prayer clause (b) during the pendency of the First Appeal. Prayer clause (b) reads thus:

“b. Pending the hearing and final disposal of the present First Appeal the Appellant, his Agents, Servants and any person claiming through him be restrained by an Order of Injunction from parting with possession and creating any third party right of any nature whatsoever in respect of the suit premises i.e Room No. 159 admeasuring 300 sq. ft., Building No. 20 situated at Motilal Nagar No.1, Goregaon(West), Mumbai – 400 104. ”

(ii) Civil Application stands disposed of in the above terms.

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7. Appellant is at liberty to file private paper-book within a period of 8 weeks and serve copy to the Respondents. Parties are at liberty to apply for early date of hearing of the First Appeal as and when the First Appeal is ready for final hearing.

[GAURI GODSE, J.]