

Chitra Sonawane

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

**CIVIL WRIT PETITION NO.11272 OF 2017
A/W
CIVIL APPLICATION NO.2433/2018
IN
WRIT PETITION NO.11272 OF 2017**

**Yamunabai Tukaram Yadav
& Anr.**

.... **Petitioners.**

Versus

Smt.Kondabai Bhikaji Sankpal

.... **Respondent.**

Miss Sangeeta S. Vaidya for petitioners.

None for the respondent.

CORAM : N.R. BORKAR, J.

DATE : 9th MARCH, 2022.

PC.:

1. This petition takes an exception to the order dated 28.08.2017 passed by the District Judge, Pune in Civil Revision Application no.13/2016 whereby the learned District Judge dismissed the revision filed by the petitioners and confirmed the order passed by the Small Causes Court at Pune in R.C.S.No.111/2010.

2. The husband of the petitioner no.1, Tukaram Maruti Yadav who died on 6.6.2005 had filed a Regular Civil Suit No.1129 of 1993 against the respondents for eviction and possession in the Court of Civil Judge, Junior Division, Pune.

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3. The trial court decreed the suit vide judgment and decree dated 24.4.1994. Appeal was filed against the said decree and the appellate court remanded the matter back to the trial court. The suit was again decreed by the judgment and order dated 27.4.1998. Again the appeal was filed and the appellate court by relying upon the Judgment reported in AIR 1990 Bombay 337 held that the Civil Court has no jurisdiction to entertain the suit against a gratuitous licensee. The appellate court, however, instead of returning the plaint, dismissed the suit. Second appeal was filed before this court against the judgment and decree of the appellate court. In the second appeal, order of dismissal of the suit was set aside and the plaint was allowed to be presented to the Small Causes Court. Accordingly, the plaint was presented before the Court of Small Causes, Pune. The Small Causes Court, Pune decreed the suit. Pursuant to the said decree Darkhast was filed and possession of the suit premises was obtained.

4. It appears that thereafter, application for setting aside the decree passed by the Small Causes Court came to be filed alleging it to be exparte decree. Said application was allowed, the decree was set aside and the suit was restored to the file. An application was thereafter filed by the respondent for restoration of possession. The trial court allowed the said application by order dated 16.1.2016 and directed the petitioner to hand over the possession of the suit premises to the respondent. The petitioner had filed revision against the order dated 16.1.2016. The revisional court dismissed the revision by order impugned in this petition.

5. This Court (**Coram:M.S.Sonak,J**) on 9.10.2017 had passed the following order.

- 1. Not on board. Upon production, taken on board.*
- 2. Issue notice to the respondents, returnable on 14th November 2017 on Supplementary Board.*
- 3. In addition to the usual mode of service, private service is permitted. The petitioners to file affidavit of service.*
- 4. Till the next date, there shall be ad-interim relief in terms of prayer clause (c) subject to the petitioner depositing before the trial court an amount of Rs.75,000/- on or before the next date. If the amount is not deposited, this ad-interim order shall be deemed to be vacated without further reference to this Court.*
- 5. It is made clear that pendency of the present proceedings shall not be an impediment to the trial court to proceed with the suit on its own merits.*
- 6. All concerned to act on the basis of authenticated copy of this order.*

6. This Court (**Coram: Revati Mohite Dere, J**) thereafter on 9.12.2019 had passed the following order.

- 1. Not on board. Taken on board and heard with matter at serial no.1 i.e. Writ Petition No.11272/2017.*
- 2. By this application, the applicant seeks clarification of para 4 of the order dated 9.10.2017, which reads as under;*
“4.Till the next date, there shall be ad-interim relief in terms of prayer clause (c) subject to the petitioner depositing before the trial court an amount of Rs.75,000/- on or before the next date. If the amount is

not deposited, this ad-interim order shall be deemed to be vacated without further reference to this Court.”

3. Learned counsel for the applicant states that the applicant has deposited Rs.75,000/- on 25.10.2017 in the trial Court as directed by this Court (Coram:M.S.Sonak,J) vide order dated 9.10.2017. Learned counsel for the applicant states that the matter was adjourned to 14.11.2017, however, it has never come up on Board after 9.10.2017, and as such the ad-interim relief granted would stand continued, the applicant having deposited the amount mentioned in the order within the stipulated period i.e. before 14.11.2017.

4. It is made clear that since there is compliance of the order of deposit dated 9.10.2017 and the matter has not come up on board thereafter, the ad-interim relief is continued until further orders.

5. The application is accordingly disposed of.

6. All concerned to act on the basis of authenticated copy of this order.

7. I have heard the learned counsel for the petitioner. The matter was listed yesterday. However, as there was no appearance on behalf of the respondent and therefore, the matter was adjourned. Today again there is no appearance on behalf of the respondent. Learned Counsel for the petitioner submits that considering the facts and circumstances, hearing of the suit be expedited and interim order passed by this court be continued till disposal of the suit. Learned counsel for the petitioners has tendered an Undertaking that in case suit is dismissed the petitioner undertakes to hand over possession of the suit premises to respondents.

8. Admittedly, the parties are litigating since 1993. The respondent has not taken any steps to get the interim order vacated passed by this Court on 9.10.2017. Considering these facts and circumstances of the case and in view of the Undertaking filed by the petitioners, in my view, it would be appropriate to direct the trial court to decide the suit expeditiously and to continue the interim order passed by this Court.

9. In the result, following order is passed.

:ORDER:

1. The trial court is directed to decide R.C.S.No.111/2010 as early as possible and in any case within one year from the date of receipt of copy of this order.
2. The interim order passed by this Court on 9.10.2017 shall remain in operation till decision of the suit.
3. Needless to mention that, while deciding the suit, the trial court shall pass an appropriate order in relation to an amount of Rs.75,000/- deposited by the present petitioners, pursuant to the order dated 9.10.2017.
4. Petition is disposed of in above terms.
5. In view of disposal of the petition, Civil Application No.2433/2018 does not survive and the same is disposed of accordingly.

(N.R. BORKAR, J.)

