

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.33 OF 2019

GURPREET NAGRA

....APPELLANT

Versus

**LAJU MENON @ LAJU
MENON NAGRA AND
2 ORS.**

....RESPONDENTS

Mr Vibhav Amonkar, Advocate for the Appellant.

Mr U.R. Timble, Advocate for Respondent No.1.

**Mr Shivan Desai with Ms M. Viegas, Advocates for Respondent
Nos.2 & 3.**

CORAM : M. S. SONAK, J.

DATE : 22nd FEBRUARY 2023

ORAL ORDER :

1. Heard learned Counsel for the parties.
2. By the impugned order dated 23.11.2018, the Trial Court has disposed of appellant's application for a temporary injunction in the mandatory form. In this application, the appellant had applied for the following reliefs :

(a) Pending the hearing and final disposal of the present suit, the defendant nos.2 & 3 be directed to

handover vacant possession of the said house located in the suit property to the plaintiff and on failure thereof the defendant nos.2 & 3 be ordered to be summarily evicted from the said house located in the suit property by way of Temporary Mandatory Injunction.

(b) Pending the hearing and final disposal of the present suit, the defendant nos.2 & 3 be directed to pay an amount of Rs. 1,00,000/- per month from January 2016 till the lawful & vacant possession of the said house is handed over to plaintiff alongwith the interest at the rate of 18% per annum to be calculated on the said amount and/or be directed to deposit the same before this Hon'ble court by way of Temporary Mandatory Injunction.

(c) Pending the hearing and final disposal of the present suit, the defendant nos.2 and 3 be restrained from interfering in any manner whatsoever with the suit property inclusive of the house and/or from carrying out any construction/re-construction /modification/ renovation/repairs to the house located in the suit property to the plaintiffs by way of Temporary Injunction.

3. During the pendency of this appeal, respondent nos.2 & 3 represented by Mr Desai have already handed over the possession of the suit premises to respondent no.1, who is incidentally the divorced wife of the petitioner. This position is confirmed by Mr Timble, the learned Counsel for respondent no.1.

4. Accordingly, the relief of mandatory injunction that respondent nos.2 & 3 should be evicted from the suit premises is rendered infructuous. Mr Amonkar does not press for this interim relief any longer but he submits that the appellant had also prayed for a direction to respondent nos.2 & 3 to pay an amount of ₹1.00 lakh per month from January 2016 till possession is restored to the plaintiff. He points out that this relief was not even considered by the Trial Court. He submits that there is no discussion in the context of this relief.

5. As noted earlier, the relief of restoration of possession or an injunction from interference by respondent nos.2 & 3 has already become infructuous. In so far as the prayer for the deposit of amounts is concerned, there is no point in keeping this appeal pending because the Trial Court does not appear to have considered this part of the prayer. Besides, it is noted that no prayer was made against respondent no.1 because Mr Desai pointed out that the respondent nos.2 & 3 were inducted by respondent no.1 and has made payments to respondent no.1 in terms of the Leave and Licence Agreement.

6. Accordingly, liberty is granted to the appellant to file a fresh application seeking payments. Such an application, if filed, will have to be considered by the Trial Court on its own merits and in accord with law. All contentions of all parties in this regard are kept open.

7. With the above liberty, the Appeal From Order is disposed of.
There shall be no order for costs.

M. S. SONAK, J.