

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1591 OF 2022
IN
AO(ST)/21943/2021
WITH
AO(ST)/21943/2021
WITH
IA(ST)/21945/2021 IN AO(ST)/21943/2021

Nand Premsagar Devkota	... Applicant
IN THE MATTER BETWEEN	
Nand Premsagar Devkota	... Appellant
Versus	
Zainab Ismalibhai Mansuri and Another	... Respondents
...	
Mr. Yatin R. Shah with Mr. Vipul Makwana, for Applicant/Appellant.	
None , for Respondents.	

...

CORAM : SANDEEP V. MARNE, J.
DATE : 29 NOVEMBER 2023.

P. C.:

INTERIM APPLICATION NO.1591 OF 2022:

1 The Interim Application is filed seeking condonation of delay in filing the Appeal. Respondents are already served by private notice and the Appellant has filed Affidavit of service. None appears for the Respondents. However considering the nature of final order that has been passed in the Appeal, it is not necessary to wait any longer for service of court notices on the Respondents.

2 Considering the averments made in the Application, the same is allowed. Delay in filing the Appeal is condoned. The Interim Application is disposed of.

**APPEAL FROM ORDER (STAMP) NO.21943 OF 2021
WITH
INTERIM APPLICATION (STAMP) NO.21945 OF 2021:**

3 The learned Counsel appearing for the Appellant would submit that the Suit has been instituted inter alia for protection of possession without following due process of law. It would submit that during pendency of the suit, the Plaintiff has already been dispossessed. He would submit that the Plaintiff intends to file a fresh Suit seeking damages. For that purpose he would submit that the Plaintiff wants to withdraw the S.C. Suit No.1461 of 2020 and file a fresh suit seeking damages. He would also pray for withdrawal of the present Appeal. Since the Plaintiff is intending to file a fresh suit for damages, the Appeal is accordingly disposed of granting leave to the Plaintiff to file a fresh suit after withdrawal of S.C. Suit No.1461 of 2020. The Appeal is accordingly disposed of.

4 In view of the disposal of the Appeal, the Interim Application does not survive and the same is disposed of accordingly.

SANDEEP V. MARNE, J.