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

**SECOND APPEAL NO.414 OF 2019
WITH
CIVIL APPLICATION NO.942 OF 2019
IN
SECOND APPEAL NO.414 OF 2019**

Shri. Vitthaladas Ranchhoddas Dawada ...Appellant/
Applicant

V/s.

Mrs. Rajanee Pandurang Kawale ...Respondent

Mr. Girish R. Agrawal, for the Appellant/Applicant.

Mr. Tushar N. Sonawane, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 17th MARCH, 2023**

P.C.:

1. Mr. Agrawal, learned Advocate appearing for the Appellant and Mr. Sonawane, learned Advocate appearing for the Respondent argued the Second Appeal completely on 15th March, 2023. This Court was not inclined to admit the Second Appeal as there is no substantial question of law involved and, therefore, Mr. Agrawal sought time to take instructions. After taking instructions, he submitted that if, longer time is granted to vacate the suit premises then, he has instructions from wife and children of the Appellant to withdraw the Second Appeal. He submitted that, the

Appellant for last about two months is on life support system and, therefore, not in a position to give the instructions.

2. Mr. Sonawane, learned Advocate appearing for the Respondent in view of above statement of learned Advocate appearing for the Appellant took instructions and submitted that if, the Second Appeal is withdrawn then, he has instructions to agree to grant two years time to the Appellant to vacate the suit premises. Both the parties also agreed that the decree of mesne profits be quashed and set aside by consent. Therefore, both learned Advocates have tender Minutes of Order which are signed by both the Advocates as well as by Rohit Vitthaldas Dawada i.e. son of the Appellant. The said Minutes of Order are taken on record and marked 'X' for identification.

3. Mr. Agrawal, learned Advocate appearing for the Appellant also tenders undertakings dated 16th March, 2023 of Rohit Vitthaldas Dawada i.e. son of Appellant, Sanjay Vitthaldas Dawada i.e. son of Appellant, Sharda Kacharu Kokane i.e. daughter of Appellant and Nirmala Vitthaldas Dawada i.e. wife of Appellant. He states that, two daughters of Appellant namely Rita Bharat Murgeshar and Divya

Arvind Thakkar will file similar undertakings, within a period of two weeks from today and he has instructions to give oral undertakings on their behalf in terms of the Minutes of Order. The undertakings which are submitted today are taken on record. The said undertakings are accepted and marked as 'X1', 'X2', 'X3' & 'X4' for identification. Undertakings given by Mr. Agrawal, learned Advocate appearing for the Appellant on behalf of said daughters of Appellant namely Rita Bharat Murgeshar and Divya Arvind Thakkar are also accepted.

4. Thus, resultantly the judgment and decree of the learned Trial Court as well the learned First Appellate Court is confirmed except clause No.[3] regarding mesne profits and the Second Appeal is disposed of in terms of the Minutes of Order. The decree of mesne profits is set aside by consent. However, it is clarified that if, the Appellant and his family members or any person claiming through them fails to vacate the suit premises then, apart from the consequences as provided in the Minutes of Order, the Respondent is at liberty to take out proceedings for committing contempt of this Court for violating undertakings given to this Court.

5. In view of Minutes of Order and the said undertakings, the Second Appeal is disposed of in terms of Minutes of Order.

6. As the Second Appeal is disposed of, nothing survives in the Civil Application and the same is also disposed.

[MADHAV J. JAMDAR, J.]