

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 594 OF 2023
WITH
INTERIM APPLICATION NO. 16335 OF 2023
IN
SECOND APPEAL NO. 594 OF 2023**

Sanjay Maniklal Gulkeri	... Appellant/Applicant
VS.	
Rajendra Yahswant Rawal	... Respondent

Mr. Rushikesh Kale for the Appellant/Applicant.

Mr. Hitesh Vyas i/b Sandeep Waghmare for the Respondent.

CORAM : GAURI GODSE, J.

DATED : 8th JULY 2024

ORDER:

1. Learned counsel for the appellant, on instructions, submits that the appellant be granted longer time of three months to vacate. He submits that he would not press the second appeal in the event he is granted longer time of three months to vacate and if the respondent does not press the decree for mesne profits.

2. Learned counsel for the appellant has tendered an affidavit-cum-undertaking dated 4th July 2024 executed by the applicant. The undertaking states that he shall hand over peaceful and vacant

possession of the suit property to the respondent within three months from the date of order passed by this Court. The undertaking dated 4th July 2024 is taken on record.

3. Learned counsel for the respondent on instructions of the respondent, who is present in the Court submits that he has no objection to grant time of three months to the appellant subject to he handing over the possession on expiry of period of three months alongwith furniture and fixtures which was handed over to him at the time of giving possession. Learned counsel for the respondent has tendered an affidavit dated 8th July 2024 singed by the respondent. The said affidavit is also taken on record. The affidavit specifies the fixtures to the suit flat which the respondent would want the appellant to hand over.

4. Learned counsel for the appellant, on instructions of the appellant submits that, the appellant would hand over peaceful and vacant possession of the suit property to the respondent along with furniture and fixtures.

5. The aforesaid undertakings given by the appellant are accepted as undertaking to this Court.

6. In view of the aforesaid undertakings, the Second Appeal is disposed of by passing the following order:

- (i) The appellant is granted three months time from today to hand over the vacant and peaceful possession of the suit property along with furniture and fixtures to the respondent.
- (ii) Subject to the appellant handing over peaceful possession of the suit property to the respondent within the aforesaid time as stated above, the respondent shall not press for the decree for mesne profits.
- (iii) It is clarified that if the aforesaid undertaking is not complied with by the appellant, it will be open for the respondent to execute the impugned decree for possession as well as mesne profits.
- (iv) The aforesaid undertakings are accepted as an undertaking to this Court.

7. The Second Appeal is disposed of in the aforesaid terms.

8. In view of disposal of the second appeal, Interim Application No. 16335 of 2023 is disposed of as infructuous.

Digitally
signed by
MANGALTAI
JAYWANT
JADHAV
Date:
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(GAURI GODSE, J.)