

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION N. 6730 OF 2024
IN
SECOND APPEAL NO. 314 OF 2022**

Anil Anantrao Naik and Ors.

} ...Appellants

V/S.

Smt. Indumati Anantrao Naikh
(since deceased through its legal heirs)
and Ors.

} ...Respondents

Mr. Sharad Chandrachood, for the Applicants/Appellants.

Mr. Niranjan A. Mogre, for Respondent Nos.1A to 1C.

CORAM : SANDEEP V. MARNE, J.

Dated : 1 April 2024.

P.C. :

1) This application is filed by the Applicants/Appellants for withdrawal of the amount of Rs.15,82,700/- deposited with the first Appellate Court in pursuance of Order dated 17 August 2017.

2) The dispute between the parties, who are siblings, was with regard to the share in the suit property, part of which is occupied by the Appellants. The Respondents in the Appeal had sought eviction of the Appellants on the ground that they are mere gratuitous licensees. Upon decree of the claim of the Respondents for eviction of Appellants from suit property by the trial court, the first Appellate Court had stayed the decree for eviction on a condition that the Appellants shall deposit compensation @ Rs.32,300/- per

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month from the date of decree i.e. 24 April 2017 and shall continue to deposit the same on fifth day of each calendar month. The Appeal came to be dismissed by the first Appellate Court by Judgment and Order dated 3 September 2021. Accordingly, for the period till July 2021, the Appellant has deposited the amount of monthly compensation as directed by the first Appellate Court. The total amount deposited by the Appellants towards compensation in the first Appellate Court is Rs. 15,82,700/-.

3) This Court has dismissed Second Appeal filed by the Appellants by Order dated 23 January 2024 and has upheld the decree for their eviction from suit property. The Appellant will have to vacate the suit premises on account of dismissal of the Appeals.

4) Mr. Chandrachood, the learned counsel appearing for Appellants would fairly submit that though the Decree is being executed at the behest of Respondents, Appellants are willing to handover possession of the suit property to Respondents on/or before 15 April 2024. He would submit that Appellant No.1, being the brother of Respondents, has already lost right, title and interest in the suit property. That his current age is about 82 years and that he is in need of funds for the purpose of making an alternate arrangement of residence at this advanced age. He would therefore submit that the Appellant No.1 be permitted to withdraw the amount deposited in the first Appellate Court alongwith accrued interest.

5) Mr. Mogre, learned counsel appearing for Respondent Nos.1A to 1C would oppose the request submitting that the direction for payment of

compensation was issued by the first Appellate Court considering the ratio of the judgment of the Apex Court in **Atmaram Properties V/s. Federal Motors Pvt. Ltd.** (2005) 1 SCC 705. He would further submit that the Appellants have unauthorisedly occupied the suit property for a considerable period of time and they cannot now be permitted to withdraw the amount of compensation deposited in pursuance of the direction of the first Appellate Court. Alternatively, Mr. Mogre would submit that considering the relationship between the parties, the Respondents be permitted to withdraw 50% of the deposited amount alongwith interest and the balance 50% can be withdrawn by Appellant No.1.

6) I have considered the submissions canvassed by the learned counsel appearing for parties.

7) The dispute between Appellant No.1 and his three brothers related to share in the suit property, originally owned by their mother, Indumati. Appellant No. 1 claimed that he had actually purchased the suit property out of his own funds in mother's name as benami transaction and that he has built the structure thereon. Appellant No. 1 came in possession of the suit premises alongwith his family members as he is the son of the original owner, Indumati. Though, he is ultimately held as a mere gratuitous licensee, this is not a relationship between a pure licensor and a licensee. Appellant No. 1 has been residing in the suit property along with his family for a considerable period of time. Appellant No.1 occupied the suit property under his belief that he has right, title and interest in the same. Though in ordinary circumstances, Appellant No.1 would be liable to pay compensation

for unauthorized occupation of the suit property, considering the relationship between the parties so also the peculiar facts and circumstances of the present case, I am of the view that since Appellant No.1 is already denied any share in the suit property, he need not be made to suffer further by making him liable to pay compensation in respect of occupation of the suit property by him during the pendency of Appeal before the first Appellate Court. Though Mr. Mogre has, in his usual fairness, agreed to share 50% of the deposited amount with Appellants, in my view, the benevolence offered by him needs to be extended further by permitting Appellants to retain the entire deposited amount. Afterall, Appellant No. 1 is the only brother who is ultimately excluded from any share in the suit property. The least that he must get out of long litigation fought by him is to receive the money deposited by him for scouting for another house at this advanced age.

8) Appellant No.1 is at an advanced age of 82 years and is required to look for another premises on account of decree of eviction passed against him. Considering the above peculiar facts and circumstances of the case, I am of the view that the Appellant No.1 can be permitted to withdraw the entire amount of Rs.15,82,700/- deposited by the first Appellate Court alongwith accrued interest, subject to the condition that the Appellants handover keys of the suit property to the Respondents (or their authorised representative) on/or before 15 April 2024. Mr. Chandrachud is agreeable to this condition.

9) The Interim Application is accordingly allowed. The statement made on behalf of the Appellants that they will vacate the suit property and

handover keys thereof to the Respondents or to their authorised representative on/or before 15 April 2024 is recorded and accepted as an undertaking given to this Court. Appellant No.1 shall be at liberty to withdraw the entire amount deposited in the District Court, Pune alongwith accrued interest. With the above directions, the Interim Application is **disposed of.**

[SANDEEP V. MARNE, J.]