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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION NO. 10883 OF 2024
IN
SECOND APPEAL NO. 951 OF 2016**

Asha Ashok Pawaskar

.....Applicant

Vs.

Usha Laxman Salaskar and anr

.....Respondents

Limbadi V. Bommer a/w Shivkumar Mishra for the applicant

Ms. Sandhya Mailagir a/w. Mr. Sumeet Patil for respondent no. 1

CORAM : GAURI GODSE, J.

DATE : 18th NOVEMBER 2024

ORDER:

INTERIM APPLICATION NO. 10883 OF 2024:

1. This application is for restoration of the second appeal which was dismissed for non prosecution on 19th January 2024. The second appeal is preferred by defendant no. 2 to challenge the concurrent judgments and decrees directing the defendants to hand over the possession of the suit property in favour of respondent no. 1. Respondent no. 1 is the owner of the suit flat.

This is the corrected order pursuant to speaking to the minutes order dated 4th December 2024

2. Learned counsel for the applicant submitted that defendant no. 1 is the husband of defendant no. 2. He submits that the plaintiff is sister of defendant no. 1. He submits that there are proceedings initiated by the applicant under The Protection of Women from Domestic Violence Act, 2005 against defendant no. 1. He on instructions submits that the applicant would pursue her grievances in the proceedings initiated by her against defendant no. 1. He on instructions submits that applicant be granted longer time of six months to vacate the suit flat. He submits that the applicant be thus granted liberty to pursue her remedies against defendant no. 1.

3. In view of the request made on behalf of the applicant for grant of longer time of six months to vacate, learned counsel for respondent no. 1 (original plaintiff) submits that if the time is to be granted to vacate the suit flat, the applicant and her daughter who is major be directed to file an undertaking in this Court.

4. Learned counsel for the applicant on instructions submits that applicant and her daughter would file necessary undertaking in this Court within one week from today. Learned counsel for the applicant submits that the applicant and her daughter are present in court.

5. In view of the aforesaid arrangement, Interim Application is allowed and order dated 19th January 2024 is recalled.

6. Second appeal is restored to the file.

SECOND APPEAL NO. 951 OF 2016:

7. Appellant is permitted to withdraw the second appeal with liberty to agitate her grievances in the proceedings initiated by her against defendant no. 1. The appellant is granted time of six months to vacate the suit flat on following terms and conditions:

I. Second appeal is disposed of as withdrawn with liberty to the applicant to pursue her remedies against respondent no. 2 (defendant no. 1) in the proceedings already initiated by her against respondent no. 2.

II. Appellant is granted six months time from today to vacate the suit flat subject to the appellant and her daughter filing the undertaking in this Court within one week from today. The undertaking shall state that only the appellant and her daughter are occupying the suit flat and they shall hand over the possession to **respondent no. 1** on or before 18th May 2025. The undertaking shall also state that the appellant and

her daughter shall not part with possession or create any third party interest in the suit flat.

III. It is clarified that this Court has not examined the rival contentions of respondents inter se on merits. Hence, all contentions of the respondents are kept open.

IV. It is also clarified that if necessary undertaking is not filed in this Court within one week or if there is breach of any of the conditions of the undertaking, **respondent no. 1** shall be entitled to execute the impugned decree.

V. In view of the time granted to vacate the suit flat as stated herein above, further proceedings in Special Darkhast No. 15 of 2015 shall remain stayed for six months from today and the possession warrant issued shall not be executed for a period of six months from today.

[GAURI GODSE, J.]