

Thacker Hariram Motiram

Vs

Balkrishan Chatrabhu Thacker and Others

Civil Appeal No. 361 of 1986

(Sabyasachi Mukharji, S. Ranganathan JJ)

25.04.1988

ORDER

Interim order staying dispossession was granted by this Court on January 24, 1986. It appears that before the learned Judge of the High Court the learned advocate who appeared for the petitioner, requested that in view of the fact that the decree for actual possession was being passed in second appeal, the tenant might be given some reasonable time for "handing over vacant possession of the suit premises to the original plaintiffs". He further submitted that a period of about three years might be granted for this purpose. The learned advocate for the original plaintiffs vehemently opposed this request for time. The learned Judge after considering the request for handing over the possession directed that one year's time be given and further undertaking should be given within a period of three weeks "stating that vacant possession would be handed over within the aforesaid time." It appears that the undertaking was affirmed on November 9, 1985 wherein it was stated that the appellant would vacate and give vacant possession of the suit premises by December 31, 1985 i.e., to say after one year if "by that time no stay order from the Supreme Court is received as I intend to file an appeal in the Supreme Court". This undertaking filed by the appellant in our opinion is in clear variation with the oral undertaking given to the learned Judge which induced him to give one year's time. We do not wish to encourage this kind of practice for obtaining time from the court on one plea of filing the undertaking and taking the different stand, in applications under Article 136 of the Constitution. In that view of the matter the interim order is vacated and we direct that the appellant should hand over possession to the respondents forthwith.

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