

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 515 of 2011
With
R/CROSS OBJECTION NO. 81 of 2011
In
R/FIRST APPEAL NO. 515 of 2011

=====

JITENDRA DAHYABHAI KOTAK

Versus

KAMLABEN VASANTRAI KOTAK & ORS.

=====

Appearance:

MR KV SHELAT(834) for the Appellant

MR. SHYAM K SHELAT(6552) for the Appellant

MR VAIBHAV A VYAS(2896) for the Defendant Nos. 1,2,3,4

=====

CORAM: **HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 19/11/2024

ORAL ORDER

1. When the matter is taken-up for hearing, Mr. K.V. Shelat, learned advocate appearing for the appellant is not present. Mr. Smit Vaghela, learned advocate had appeared on behalf of Mr. Vaibhav Vyas, learned advocate on record for the respondents and addressed the Court on merits of the case.

2. It is submitted that the counter claim preferred by the original defendants was allowed by the Trial Court and appropriate orders have been passed directing the plaintiff to vacate the suit property within two months thereafter. The plaintiff was also directed to pay the *mesne* profit of Rs.500/- per month with the defendants from the date of filing of the

counter claim till the possession of the suit premises is handed over to the defendants.

3. The attention of this Court was invited to the order dated 6th May, 2011 passed in Civil Application for stay in the captioned appeal, whereby this Court had stayed the impugned order on a condition that the applicant shall deposit entire amount of *mesne* profit as directed by the Trial Court within period of eight weeks thereafter. Even the undertaking was required to be filed to that effect by the applicant.

4. By making the aforesaid submissions, learned advocate has submitted that in spite of the aforesaid directions, the appellant have not deposited any amount towards *mesne* profit. The photographs of the suit premises has been placed on record to indicate that though the possession of the appellant has been believed by the Trial Court, the same is in dilapidated condition and is not used.

5. The Court could have proceeded to pass appropriate order, however, noticing the absence of the learned advocate for the appellant, in the interest of justice, the matter is adjourned to **25th November, 2024**.

6. Learned advocate for the appellant is requested to take appropriate instructions with regard to the deposit of *mesne* profit as directed by the Trial Court, failing which the Court may pass appropriate orders.

(NISHA M. THAKORE, J.)

AMAR RATHOD...