

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1244 OF 2015**

K.R. Patel HUF

..Petitioner

Vs.

M. M.Developers & Ors

..Respondents

Mr. Sharan Jagtiani with Ms Sheetal Shah i/b M/s Mehta & Girdharilal for the Petitioner

Mr. Javed Hussein with Mr. Sangram Lotankar, Mr. Alice Shaikh, Mr. Mubashir Hussein i/b Hussein & Co. for the Respondents

**CORAM : R. M. SAVANT, J.
DATE : 6th FEBRUARY, 2015**

P.C.

1 At the outset, the Learned Counsel for the Petitioners tenders a copy of the operative part of the impugned order which the Petitioners have obtained today morning by transcribing it from the record. The said copy is taken on record. The Petitioner to carry out necessary amendment in the Petition and annexe the said copy to the Petition as Exhibit "E".

2 The cause for filing the above Writ Petition is the extension of two weeks granted by the Trial Court i.e. the Learned Judge of the City Civil Court to deposit the amount of Rs.64.63,096/- which is the deposit to be made by the Defendants i.e. the Respondents herein on the basis of which conditional leave

to defend the Suit has been granted to the Defendants.

3 The Defendants had filed a Writ Petition in this Court being Writ Petition No.9973 of 2014 challenging the order dated 4-8-2014 passed by the Trial Court i.e. the Learned Judge of the City Civil Court, Greater Mumbai by which order leave to defend in the Summary Suit in question was granted on the condition that the Defendants deposit the amount of Rs.64,63,096/- in the said Court within 6 weeks from the said date. This court had dismissed the said Writ Petition and thereby confirmed the order passed by the Trial Court. However, whilst dismissing the said Petition, this Court had recorded the statement made by the Learned Counsel appearing on behalf of the Plaintiff i.e. the Petitioner herein that it would not precipitate the matter for a period of 6 weeks as the Defendants wanted to approach the Apex Court against the order passed in the said Writ Petition.

4 The Defendants thereafter filed SLP No.35412 of 2014 in the Apex Court. The Apex Court by the order dated 18-12-2014 dismissed the said SLP but on the request made by the Learned Counsel for the Defendants who were the Petitioners in the said SLP, extended the time to deposit the said amount by a period of 6 weeks. The said 6 weeks period was therefore to come to an end on 29-1-2015. It seems that the Suit was listed on 4-2-2015 in the Trial Court on which day the application Exhibit 6 came to be filed on behalf of the

Defendants i.e. the Respondents herein for further extension of time to deposit the amount on the grounds mentioned in the said application. Pertinently the Defendants made no reference to the proceedings filed in the Apex Court or the order passed by the Apex Court dated 18-12-2014.

5 It seems that the said application was served on the Plaintiff in the Court itself on 4-2-2015 and the Plaintiff was asked to give its say which it accordingly gave and which has been endorsed on the said application on the reverse. The Plaintiff opposed the application and drew the courts attention to the order passed by the Apex Court dated 18-12-2014 and contended that the extension if any can only be obtained from the Apex Court. The Trial Court inspite of the said reply and inspite of the fact that the order of the Apex Court was already on record, proceeded to entertain the said application Exhibit 6 and granted two weeks time i.e. time up to 18-2-2015 to make the said deposit. Since the order was passed on 4-2-2015, the Learned Counsel for the Petitioner states that a copy of the said order containing the reasons is not available but the Learned Counsel appearing on behalf of the Petitioner has produced a typed copy of the operative part of the order which has been transcribed from the record of the Suit today in the morning, which typed copy discloses that the application Exhibit 6 is allowed and time for compliance is extended by two weeks from the date of the said order. The Suit has been accordingly adjourned to 18-2-2015.

6 The said fact is not disputed by Mr. Hussein the Learned Counsel appearing on behalf of the Respondents i.e. the Defendants in the Suit. The question that therefore begs an answer is whether the Trial Court had the jurisdiction to entertain the application Exhibit 6 to extend the time when the time had been extended by the Apex Court by order dated 18-12-2014. The Apex Court having stipulated the time by extending the period granted for deposit obviously the extension if any of the said time had to be obtained from the Apex Court and the Trial Court could not have done so. Hence the exercise of jurisdiction, by entertaining the application Exhibit 6 by the Trial Court is totally erroneous. The Trial Court ought to have directed the Defendants to seek extension from the Apex Court, however did not do so and has passed the order which can therefore be said to be an order passed without jurisdiction. Faced with this situation, the Learned Counsel Mr. Hussein appearing for the Respondents / Defendants firstly accepts the position that the extension ought to have been sought from the Apex Court and thereafter makes a statement that the Defendants would withdraw the said application Exhibit 6 and would file an application before the Apex Court seeking extension of time to comply with the order of deposit. The said statement is made by the learned Counsel for the Respondents Mr. Hussein on instructions of his clients i.e. the Defendants. In view of the said statement made by Mr. Hussein it is not necessary to consider the impugned order on merits. The consequence of the

said statement would be that the order dated 4-2-2015 granting extension of time to make the deposit would have to be quashed and set aside and is accordingly quashed and set aside. However, it would be open for the Defendants i.e. the Respondents herein to approach the Apex Court for seeking extension of time for compliance of the order of deposit. The Petition is allowed to the aforesaid extent and to stand disposed of accordingly. The parties to act upon an ordinary copy of this order duly authenticated by the Courts Shirestedar.

[R.M.SAVANT, J]