

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1139 OF 2014
IN
FIRST APPEAL NO.1246 OF 2012

Kanwar Vilas Nath & Anr.

.... Applicants

In the matter between

Union of India,
Through Ministry of Home Affairs,
Rehabilitation Division, New Delhi

.... Appellant

V/s.

Kanwar Vilas Nath & Ors.

.... Respondents

Mr. V.A. Thorat, Senior Advocate, i/by Mr. S.P. Kanuga,
for the Applicants.

Mr. S.R. Rajguru a/w. Mr. A.R. Varma for the Respondents.

CORAM : ABHAY S. OKA &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 6TH APRIL, 2015.

P.C. :

1. Heard learned Counsel appearing for the Applicants. The Applicants are the 1st and 2nd Respondents in the Appeal. The 1st and 2nd Respondents are the original Plaintiffs. The Decree passed in the Suit filed by the 1st and 2nd Respondents is for redemption of mortgage. Clauses (2), (6), (7) and (8) of the operative part of the impugned Decree read as follows :-

- “(1)
- (2) *It is decreed that plaintiffs are entitled to redemption of mortgage as per schedule of indenture of modification and additional securities dated 8/9/1972.*
- (3)
- (4)
- (5)
- (6) *Defendant no.1 is also ordered to reconvey the mortgage properties in favour of the plaintiff at the cost of plaintiff.*
- (7) *Defendant no.1 is hereby ordered to execute all appropriate endorsement on the indenture of mortgage dated 21/4/1960 and indenture of modification dated 8/9/1972 with required endorsement/cancellation of mortgage and deliver the possession of mortgage properties within three months from the date thereof.*
- (8) *Defendant no.1 is also ordered to deliver the original documents deposited by the defendant in respect of mortgage deed and indenture of modification.*
- (9)
- (10)
- (11)”

2. The Appeal preferred by the Union of India has been admitted on 7th August, 2012. After hearing the learned Senior Counsel appearing for the Applicants, this Court has stayed execution and operation of clauses (2),

(6), (7) and (8) of the operative part of the Decree. By the said order, this Court has granted liberty to the 1st and 2nd Respondent to apply for appointment of Court Receiver.

3. The first prayer in this application is for permitting the Applicants to dispose of the property subject matter of the Appeal. The second prayer in this application is a consequential prayer of permitting Applicants to provide security in respect of the two plots in their possession. If the first two prayers are granted, it will virtually amount to vacating the interim relief granted by this Court after hearing Applicants. This is not a case where the existence of any event, subsequent to 7th August, 2012, bringing about a major change in the circumstances has been pleaded and proved.

4. Therefore, no case is made out for grant of prayer clauses (a) and (b). As far as prayer clause (c) is concerned, grant of the said prayer will be contrary to the interim order passed in the Appeal.

5. Therefore, none of the reliefs, which are prayed for, in this Civil Application can be granted. However, as observed in order dated 7th August, 2012, it will be open for the Applicants to take out a separate application for appointment of Court Receiver in relation to the five properties, to which reference is made in prayer clause (c).

6. Subject to what is observed above, Civil Application is rejected.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[ABHAY S. OKA, J.]