

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 261 OF 2015
Vanvir M. Bhimani .. Applicant
vs.
Ajit Developers Pvt. Ltd. & ors. .. Respondents

Mr. Hiralal Thakkar, Sr. Advocate with Mr. Mehul Rathod i/b.
Mr.Kaushik Kothari for the Applicant.
Mr. J.V. Parmar with Ms Prachi Jadhav for the Respondent Nos.1 & 2.

CORAM : M. S. SONAK, J.
DATE : 14 JULY 2015.

P.C. :-

1] This Civil Revision Application challenges the order dated 9 March 2015, made by the Appellate Bench of Small Causes Court at Mumbai to the extent, the said order imposes a condition upon the applicant to deposit a sum of Rs.50,000/- per month for stay of operation upon the execution of decree dated 16 December 2013, ordering the eviction of the applicant.

2] The learned senior counsel appearing for the applicant submitted that since last several years the possession of the suit premises is with the police authorities, in pursuance of the proceedings under Section 145 of the Code of Criminal Procedure, 1973 (Cr.P.C.). In these circumstances, learned senior counsel submitted that the requirement of payment of compensation imposed upon the applicant is not justified.

3] The learned counsel appearing for respondent Nos.1 and 2, however, disputes the position that the possession of the suit premises is with the police authorities (Matunga Police Station). The

learned counsel for respondent Nos.1 and 2 further submits that respondent Nos.1 and 2 would be willing to take possession of the suit premises during the pendency of the appeal before the Appeal Court and furnish an undertaking that in case the appeal is decided in favour of the applicant, such possession would be restored to the applicant. Learned counsel for respondent Nos.1 and 2 produced on record before this Court a necessary undertaking to the aforesaid effect which is signed by respondent Nos.1 and 2.

4] The undertaking dated 14 July 2015 is taken on record and marked 'X' for purposes of identification.

5] In view of the aforesaid undertaking, the interest of justice would be met, if respondent Nos.1 and 2, by adopting due process of law are permitted to take the possession of suit premises pending disposal of Appeal No. 93 of 2014 before the Appeal Court. The reference to due process of law is in the context of controversy that the possession of the suit premises is with the police authorities in pursuance of proceedings under Section 145 of the Cr.P.C.

6] It is, however, clarified that nothing in this order ought to be construed as enabling respondent Nos.1 and 2 to take possession of the suit premises, unless the issue of 145 proceedings, if pending is sorted out. In this regard, the Executing Court, i.e., Court of Small Causes at Mumbai is requested to issue necessary notices to the police authorities and thereafter depending upon the status of the pending proceeding, consider the issue of restoration of possession to the respondent Nos.1 and 2.

7] The undertaking tendered by and on behalf of respondent Nos.1 and 2 today, be transmitted to the records of the Appeal Court. In fact, respondent Nos.1 and 2 should also file a similar undertaking before the Appeal Court as well as the Executing Court. The undertaking is accepted by this Court.

8] It is, however, clarified that the aforesaid is only an interim arrangement pending the appeal and the same is without prejudice to the rights and contentions of the both parties.

9] In the light of aforesaid, learned senior counsel appearing for the applicant does not press this Revision Application. The Revision Application is consequently, disposed of in the aforesaid terms.

(M. S. SONAK, J.)