

pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1787 OF 2015
IN
FIRST APPEAL NO.578 OF 2015

Mrs. Medha Ramakant Khandekar ... Applicant

Vs.

Mr. Mohan Atmaram Patil ... Respondent

Mr. Ashok M. Saraogi, for the Applicant.

Mr. R.V. Govilkar i/by Ms. Smita Mhatre, for the Respondent.

CORAM : A.S. OKA &
V.L. ACHLIYA, JJ.

DATE : 10th SEPTEMBER, 2015

PC.

. Heard the learned counsel appearing for the Applicant and the learned counsel appearing for the Respondent. Appeal preferred by the Applicant for challenging the decree of specific performance has been admitted for final hearing. This is an application for stay of execution and operation of the impugned decree. It is not in dispute that the Applicant- Defendant is in possession of the suit property.

2. The Application is opposed by the learned counsel appearing for the Respondent – Plaintiff by pointing out the recitals in

the said agreement as well as findings recorded by the trial Court. He submitted that receipt of a sum of Rs.30 Lakhs by the Applicant by cheque is an admitted position. He pointed out that there is a recital in the agreement that a sum of Rs.30 Lakhs has been received by the Applicant in cash. He urged that apart from the recitals in the agreement, the evidence of the Respondent – Plaintiff has gone unchallenged. Therefore, if Applicant is praying for stay, he cannot be allowed to enjoy the amount of Rs.60,00,000/- received by him.

3. As a substantive Appeal against the decree has been admitted, stay of execution of the decree of specific performance will have to be granted. As far as the amount received by cheque in the sum of Rs.30 lakhs is concerned, there is no dispute. However, evidence regarding receipt of cash of Rs.30 lakhs will have to be gone into as the case made out by the Plaintiff is that a lumpsum amount of Rs.30 lakhs was paid at one stroke to the Applicant. The amount of Rs.30 lakhs by cheque has been received on 13th May, 2012. Therefore, the Applicant will have to deposit the said amount with interest at the rate of 9% per annum from the said date till the deposit of the said amount in this Court as a condition for grant of stay. Applicant will have to also file an undertaking that he will not create any third party interests and will not change nature of the suit property.

4. Hence, Civil Application for stay is disposed of by passing the following order:-

ORDER

(i) There will be interim stay of execution of the decree passed in terms of clauses (II) and (IV) of the operative part of the impugned Judgment and Decree subject to the following conditions :-

(a) Applicant shall deposit in this Court a sum of Rs.30 lakhs with interest thereon at the rate of 9% per annum from 13th May, 2012 till the date of deposit within a period of six weeks from today; and

(b) The Applicant shall give an undertaking to this Court that she will not create any third party rights in respect of the suit property, will not part with possession of the suit property and will not change the nature of the suit property till the final disposal of the Appeal. The said undertaking shall be filed within a period of four weeks from today;

(ii) On failure of the Applicant to comply with any of the aforesaid two conditions, the stay shall stand vacated without further reference to the Court;

- (iii) If the amount is deposited in this Court by the Applicant,
the same shall be invested in Fixed Deposit in any
Nationalised Bank till the final disposal of the Appeal.

(VL. ACHLIYA, J)

(A.S. OKA, J)

Certified to be true and correct copy of the original signed
Judgment/order.