

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1616 OF 2015
IN
WRIT PETITION NO.3064 OF 1994

Ramasha Ramavad Shukla (Since Deceased)]
Through legal heirs and representatives]
and Ors.] ... Applicants

Versus

Smt. Azizabai w/o. Abdul Karim.] ... Respondent

Mr. Jagdish N. Jayale for Applicants.

Ms. Harbans Kaur i/b M/s. K. P. Tiwari & Co. for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- JULY 20, 2015

P. C. :-

1. On 09/04/2015, this Court made the following order :-

“The Writ petition was admitted on 8 August 1994, at that time the learned counsel for Respondent No.1 made a statement that the part of the decree has already been executed and parties were directed to maintain statusquo. Thereafter the petition was on board on 12 January 2010 but none appeared for the Petitioners and it was kept on 13 January 2010, that time also none appeared for the

Petitioners and it was dismissed for nonprosecution. Thereafter the petition was restored. On 6 January 2014, at the request of Petitioner No.2 the matter was adjourned. On 21 January 2014, the Petitioners made a statement that irrespective of the presence of Advocate, the Petitioners will proceed with the matter. Thereafter on 29 January 2015 again the daughter of the Petitioner sought for time noting that for three dates nobody had appeared for Petitioners, by way of last chance, the petition was listed for dismissal. Thereafter again at the request of the Petitioners, it was adjourned and the matter is called out today. None appears for the Petitioners. The board for final hearing is notified a week in advance. Considering the earlier orders passed, petition is dismissed for nonprosecution.

2 Later on – The learned counsel for the Petitioners appeared, and tendered apology. The dismissal is recalled. Stand over to 16 April 2015, to be listed under the caption 'for Dismissal'.

2. Despite the aforesaid order, on 23/04/2015, since none appeared for the Petitioners/Applicants, the petition as well as the Civil Application was dismissed for non-prosecution.

3. By this Civil Application, the Petitioners/Applicants seek recall of order dated 23/04/2015. No case as such is made out for

recall. However, despite the events as recorded in the order dated 09/04/2015, the learned Counsel for Petitioners, once again urges that a last chance be given and the matter be restored.

4. The learned Counsel for Petitioners states that by the impugned order made on 11/03/1994, the Petitioners have been ordered to be evicted from the suit premises and if, the petition and the interim relief granted therein is not restored, the Petitioners would be evicted from the suit premises.

5. As a matter of last chance, the order dated 23/04/2015 dismissing the petition for non-prosecution can be recalled. However, the restoration of the application for interim relief shall have to be conditional. The Petitioners, on basis of interim order made on 08/08/1994, continued to enjoy the possession of the suit premises, notwithstanding the eviction decree dated 11/03/1994. Therefore, applying the principles laid down in the cases of *Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd*¹ and *State of Maharashtra and Another Vs. Supermax International Private Limited and Others*², the Petitioners shall have to be put to terms. Condition will have to be imposed for deposit of reasonable compensation.

6. According to the learned Counsel for Respondent, the amount of reasonable compensation would be substantial. However,

1 (2005) 1 Supreme Court Cases 705

2 (2009) 9 Supreme Court Cases 772

since the deposit is being directed from 01/04/1994, interest of justice would be met if deposit of reasonable compensation is directed at the rate of Rs.500/- (Rupees Five Hundred Only) per month with effect from 01/04/1994. The arrears to be deposited within four weeks from today. Further, the Petitioners to pay an additional amount of Rs.6,000/- (Rupees Six Thousand Only) towards advance reasonable compensation for the next one year. The same may be deposited on or before 30/09/2015.

7. In case the arrears are not deposited within four weeks from today, it is made clear that there shall be no interim relief and the interim relief already granted shall stand vacated.

8. Subject to the aforesaid, the Civil Application is made absolute in terms of prayer clause (a).

(M. S. SONAK, J.)