

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6862 OF 2014
IN
MISC. APPEAL NO.141 OF 2013
AND
MISC. APPEAL NO.53 OF 2012
IN
MARJI APPLICATION NO.317 OF 2012
IN
L.E.C. SUIT NO.242/291 OF 2008

Bombay Panjrapole and Others	.. Petitioners
V/s	
Mrs. Jaya Jivan Deghda (Adult) and Others	.. Respondents

Mr. B.R. Dalal for the Petitioners.
Mr. Shukla Devmani J. for the Respondent Nos. 1 to 4.

CORAM : M.S. SONAK, J.
DATED : OCTOBER 6, 2015

PC. :

. The ad-interim relief granted on 3 August 2015 is confirmed. The reason for such confirmation is that atleast prima facie, some credence shall have to be given to the Affidavit dated 3 December 2010 and receipts dated 2 September 2010. The affidavit

dated 3 December 2010, which has, interalia been made by the Respondent No.1 states that due to personal reason, she has transferred the suit premises to Mrs. Preeti Santosh Mane. The receipts indicate that the Respondent No.1 has received an amount of Rs.7,20,000/- in the context of such transfer. No doubt, the learned Counsel for the Respondent No.1 states that these documents are forgery and therefore, cannot be relied upon. At this stage, only prima facie credence is given to such documents.

2 The moment the ex-parte decree is set aside, it is not invariable rule, that the possession which has been recovered through execution of the ex-parte decree, is required to be restored. The restitution is guided by the provisions of Section 144 of the Civil Procedure Code. In ordering the restitution, the Court is required to take into consideration several other relevant aspects and thereafter make an equitable order. Rule has already been issued in this petition. In the light of aforesaid facts and circumstances, a prima facie case is made out to confirm the ad-interim order granted on 3 August 2015.

3 However, it is made clear that the Trial Court shall proceed with L.E. & C. Suit No. 242/291 of 2008 and to decide the same in accordance with law, on its own merits notwithstanding the pendency of the present petition.

(M.S. SONAK, J.)

C E R T I F I C A T E

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