

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2547 OF 2015
IN
WRIT PETITION NO.9856 OF 2003

Vidya Nivas Co-op. Housing Society Ltd. ... Applicants
Vs.
State of Maharashtra and others ... Respondents

Mr. Shailesh B. Dalal i/b. M/s. Dalal & Co. for Applicants.
Ms Vaishali Nimbalkar, AGP for Respondents No.1 to 3.
Mr. V. N. Solanki with Ms Sheela K. Mistry for Respondent No.4A.

CORAM : R. G. KETKAR, J.
DATE : 04TH SEPTEMBER, 2015

P.C. :

Heard Mr. Dalal, learned Counsel for applicants, Ms Nimbalkar, learned AGP for respondents No.1 to 3 and Mr. Solanki, learned Counsel for respondent No.4A at length.

2. By this Application, applicants have prayed for continuation of the interim order dated 12.07.2004 passed by this Court (Coram : Mr. A. M. Khanwilkar, J.) thereby directing the parties to maintain status-quo for a period of 8 weeks.

3. Mr. Dalal submitted that on 27.08.2015, the above Petition was listed for pronouncing judgment at Sr. No.902. The matter at Sr. No.901 was shown at 3.00 p.m. He was under bonafide impression that the matter at Sr.No.902 will also be taken at 3.00 p.m. He was, therefore, not present when the judgment was pronounced in the morning session.

4. He further submitted that applicants desire to challenge this order

before the Apex Court. As he was under bonafide impression that order will be pronounced at 3.00 p.m., nobody appeared on behalf of the applicants in the morning session and consequently, application for continuation of the status-quo order dated 12.07.2004 could not be made. He, therefore, submitted that the order of status-quo granted on 12.07.2004 may be continued for a period of 8 weeks so as to enable the applicants to approach the Apex Court challenging the order dated 27.08.2015.

5. On the other hand, Mr. Solanki strenuously opposed the application. He submitted that under Order 20, Rule 3 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), once the judgment is signed, it cannot be altered or added to, save as provided by Section 152 or on review. He submitted that the Court has become *functus officio*. He has taken me through the affidavit dated 04.09.2015 made by the respondent No.4A - Sanjay Ramesh Agarwal. In any case, he submitted that the applicants should not be given relief in terms of prayer clause (a) of the Application.

6. I have considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The Petition was decided and the judgment was pronounced on 27.08.2015 in the morning session. For the reasons stated in paragraph 4 of the application, I am satisfied that the applicants' Advocate could not remain present when the judgment was pronounced and consequently, could not make application for continuation of the interim order. It is not in dispute and rather it is a matter of record that interim order was passed on 12.07.2004 after hearing both sides and the same was operating during the pendency of the Petition. The judgment was pronounced in the morning session on 27.08.2015 and applicants'

advocate was not present and this position is not disputed by Mr. Solanki. He could not, therefore, make application for continuation of interim relief.

7. Reliance placed by Mr. Solanki on Order 20, Rule 3 of C.P.C. is not well founded. The Court is not altering the judgment. For the reasons stated hereinabove, as the applicants' Advocate could not make application for continuation of the ad-interim order, I am of the opinion that the applicants have made out a case for continuation of the interim order more so when it was operating for more than 11 years. Hence, the following order:

a. Civil Application is disposed of by granting interim order for a period of 8 weeks in terms of prayer clause (d) of the Petition, which reads thus,

“(d) pending the hearing and final disposal of this Petition, the impugned judgment and order dated 12.11.2002 passed by the Respondent No.3 in Appeal No.8 of 2002 be stayed.”

b. It is made clear that the applicants shall not interfere with the possession of respondent No.4A taking advantage of the interim order save and except in accordance with law. In other words, both sides to maintain status-quo with regard to the suit premises for a period of 8 weeks from today. Order accordingly.

(R. G. KETKAR, J.)

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