

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.474 OF 2015
IN
CIVIL REVISION APPLICATION NO.760 OF 2009**

Sonu @ Ashish Nanakumar Phalke : Applicant.

In the matter between

**Nanakumar Ganpat Phalke
since deceased**

Pratima @ Ashwini N. Phalke and ors. : Applicants

versus

Vasudev Shobraj Rao : Respondent.

Mr. S S Shah a/w Mr. V V Mohite for the Applicant.

Mr. Vishal Kanade i/by Mr. Haresh J Lulia for the main Applicants.

CORAM : R. M. SAVANT, J.

DATE : 30th September 2015

P.C.

1 The above Civil Application has been filed by the original Applicant No.2 for grant of stay of the decree, pending the hearing and final disposal of the above Civil Revision Application. The said decree is one passed under Section 6 of the Specific Relief Act.

2 The above Civil Application was moved in view of the fact that the possession warrant was issued and the bailiff had visited the site in question 21/09/2015. The possession warrant was issued pursuant to the execution proceeding filed by the Respondent herein i.e. the original Plaintiff which execution proceeding was filed in view of the fact that though the above Civil

Revision Application was restored to file, there was no stay operating, as the learned Judge who had restored the Civil Revision Application had fixed the Civil Revision Application for hearing on 12/06/2015. It is required to be noted that at the time when the Civil Revision Application was admitted, the stay was granted to the decree passed, however, unfortunately the Civil Revision Application came to be dismissed for non-prosecution and as indicated above the Civil Revision Application was restored, however the interim relief was not restored in view of the fact that the Civil Revision Application itself was to be heard finally.

3 In my view, since at the time of admission of the Civil Revision Application, the stay to the decree was granted, the said stay would accordingly have to be restored. Resultantly, the order dated 28/12/2010 granting interim relief is restored. The interim relief would operate pending the hearing and final disposal of the above Civil Revision Application. In the facts and circumstances of the present case where there is a decree passed under Section 6 of the Specific Relief Act in favour of the Respondent, it would be just and proper to fix the above Civil Revision Application for hearing. To facilitate the same, the above Civil Revision Application to be placed for directions on 23/11/2015 so that a date for hearing could be fixed. The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]

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