

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11014 OF 2012

Nirmala Vinayak Athawale ... Petitioner
Vs.
Vinayak L. Athawale and another ... Respondents

Mr. V. R. Sutrale for Petitioner.
Mr. Arjun Kode for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : 20TH FEBRUARY, 2015

P.C. :

Heard Mr. Sutrale, learned Counsel for petitioner and Mr. Kode, learned Counsel for respondent No.2.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 11.04.2012 passed by the learned Judge, Family Court No.3, Mumbai in Civil Miscellaneous Applications No.34 of 2011 and 218 of 2011. By that order, the Family Court disposed of both the applications and attached the property namely room No.4/9, 1st floor, New Shree Krishna Society, Shahaji Road, Shahad, Taluka - Kalyan, District – Thane under Order 21 Rule 32 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for a period of 6 months from the date of the order. Respondent was also prohibited from transferring, disposing of the property attached therein in any way, in any manner for a period of 6 months from the date of the order under Order 21, Rule 54 read with Rule 32 of the C.P.C. among other directions.

3. After arguing the Petition for quite some time, Mr. Sutrale, upon taking instructions from the petitioner, who is present in the Court, seeks permission to withdraw this Petition with a liberty to take appropriate proceedings before appropriate forum. He submitted that for a period of 2 weeks from today, respondent No.2 may be prohibited from creating third party interests in any manner whatsoever in respect of room No.1623, building No.23, Kalachowki, Cotton Green, Mumbai - 400 033 (for short 'suit room'). He assures that within 1 week from today, he will file proceedings before the appropriate Court after serving advance copy of those proceedings on Mr. Kode. He further assures that he will move the appropriate Court for interim orders within 2 weeks from today.

4. Mr. Kode, upon taking instructions from respondent No.2, undertakes that respondent No.2 will not deal with the suit room for a period of 2 weeks from today, which shall be subject to the further orders of the appropriate Court. He further states that in case the petitioner does not obtain suitable orders within 2 weeks from today, it may be made clear that respondent No.2 is relieved from the undertaking so given. The undertaking given by Mr. Kode, on behalf of respondent No.2, is accepted.

5. In view thereof, Petition is allowed to be withdrawn with liberty as prayed for. The petitioner shall institute appropriate proceedings

within 1 week from today and will serve copy in advance on Mr. Kode. The petitioner shall obtain interim relief from that Court within 2 weeks from today. The undertaking given by respondent No.2 shall be subject to the further orders that may be passed, and in case no interim relief is obtained, respondent No.2 shall stand relieved from the undertaking. It is made clear that by recording undertaking of respondent No.2, I have not expressed any opinion on the merits of the case either way. All the contentions of the parties on merits are expressly kept open. The Court will decide the proceedings on its own merits and on the basis of material on record and in accordance with law.

6. Authenticated copy is expedited.

(R. G. KETKAR, J.)

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