

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2 OF 2016

IN

CIVIL REVISION APPLICATION NO. 720 OF 2011

Harjivan Ambalal Jariwala & Anr.

...Applicants

Versus

Mohd. Shoeb Khan Sadruddin

...Respondent

Ms. Vaishali Wagle, i/b Mr. J.S. Sapra, for the Applicants.

Mr. N.V. Khaladkar, for the Respondent.

CORAM : K.K. TATED, J.

DATE : 27th April 2016

ORDER :

1. Heard learned Counsel for parties. Liberty granted to the Respondent to carry out appropriate amendment in the cause title of Affidavit in Reply dated 30th March 2016.

2. This Application is for vacating the interim order dated 26th March 2012 passed by this Court (Coram: S.V. Gangapurwala, J.) for non compliance of the same. Learned Counsel for the

Applicants submits that as per order dated 19th July 2013 in Civil Application No. 807 of 2012, this Court directed original Petitioner to deposit a sum of Rs. 10,000/- per month in the Registry of this Court and also clear the arrears.

3. On the other hand, learned Counsel Ms. Vaishali Wagle appearing on behalf of the original Petitioner vehemently opposed the present Civil Application. She submits that the Petitioner already complied with the order dated 19th July 2013 and to that effect the original Petitioner made statement in paragraph 5 of Affidavit in Reply. She submits that as there is no breach of the order passed by this Court on 19th July 2013, there is no question of vacating the interim relief. Hence, there is no substance in the present Civil Application and the same stands to be dismissed.

4 . I heard both the sides. It is to be noted that this Court by order dated 19th July 2013 directed the original Petitioner to deposit a sum of Rs. 10,000/- per month in the Registry of this Court. The original Petitioner in his Affidavit in Reply in paragraph 5 made a statement on solemn affirmation that he is depositing Rs. 10,000/- without any default.

5. Paragraph 5 of said Affidavit in Reply read thus :-

“This Respondent had also disclosed that he receives Rs. 10000 every month from the developer and hence this Respondent was directed by this Honourable Court to deposit Rs. 10000 in this court as interim compensation. The Respondent states that he has been depositing the said amount in this Court regularly and there are no pending arrears. In fact the Applicants had even made an application (after filing the present Application) for withdrawal of the said amount from the Court. However, the said application was rejected by this Honourable Court on the ground that no case for withdrawal was made out by the Applicants. After the said Application for withdrawal the present Civil Application in fact does not survive as this Applicant has not made in default in payment of the interim compensation and hence the present Civil Application filed mainly on the ground of default in payment, does not deserve to be entertained and ought to be rejected outright.”

6. Considering the submissions made by learned Counsel for the original Petitioner and paragraph 5 of the Affidavit in Reply, I do not find any substance in the present Civil Application.

7. Hence, the Civil Application stands rejected.

[K.K. TATED, J.]