

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.475 OF 2016
IN
WRIT PETITION NO. 5150 OF 2015**

M/s Ish Homes Private Limited

..Applicant

Vs.

Carridad Alex Rodrigues & Anr.

..Respondents

Mr. J. A. Khan for the Applicant

Mr. J. M. D'Silva for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 25th FEBRUARY, 2016

P.C.

1 The above Civil Application has been filed seeking extension of time to pay the costs of Rs.5000/- as directed by the order dated 31-8-2015 passed by a Learned Single Judge of this Court, M. S. Sonak J. in the above Writ Petition. The said costs were directed to be paid within two weeks. The orders impugned in the above Petition were set aside on the said basis. The reasons why the costs have not been paid are mentioned in paragraphs 4 and 5 of the above Civil Application. The sum and substance of the reasons is that when the matter came up before the Trial Court on 12-2-2016 it was realised that the costs of Rs.5000/- as directed by the order dated 31-8-2015 were not paid. It is also stated that thereafter though the costs were sought to be paid to the Defendant No.1, he refused to accept the same.

2 An affidavit in reply has been filed to the above Civil Application by the Respondent No.1 original Defendant No.1 and the past conduct of the Petitioner is sought to be pointed out in the matter of non payment of costs of Rs.1000/- which he was directed to pay by 30-1-2014, as also reliance is sought to be placed on the application made by the Petitioner in the Trial Court for an adjournment on the ground that costs are not paid.

3 It is sought to be contended by the learned Counsel for the Respondent that the reason given in paragraph 4 of the above Civil Application that the Respondent did not accept the costs is a false reason.

4 As indicated above the Writ Petition was disposed of by a Learned Single Judge of this Court by order dated 31-8-2015. By the said order the impugned orders one of which was of closing of evidence of the Plaintiff was set aside and the Plaintiff was permitted to cross-examine the official from BMC and was therefore required to take steps to examine the said official. The reasons mentioned in paragraph 4 of the above Civil Application for non payment of costs is a mistake which was realised only after the Suit had come up before the Trial Court on 12-2-2016 as the Court No.25 was vacant, can be said to be a plausible reason for non payment of costs. In any event, since a Learned Single has deemed it appropriate to allow the said Writ Petition by setting aside the orders therein by imposing costs, it would be just and proper

to allow the Petitioner herein i.e. the Plaintiff in the Suit to pay the said costs to the Defendant No.1 by extending the time for the same. However, extension of time would be on the basis of imposing further costs excluding the costs of Rs.5000/-, the Petitioner to pay further costs of Rs.2500/- to the Respondent No.1 herein within one week from date. Benefit of this order would enure to the Applicant only if the said costs are paid i.e. Rs.5000/- + Rs.2500/-. In the event the said costs are not paid as directed by the instant order, the above Civil Application would be deemed to have been rejected.

5 The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]