

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1186 OF 2016

IN

APPEAL FROM ORDER NO. 215 OF 2015

WITH

CIVIL APPLICATION NO. 1188 OF 2016

Mr. Javed Ahmed S/o. Shamim Ahmed Shaikh ...Applicants
& Ors.

Versus

Shamim Ahmed Mohammed Farooque Shaikh

...Respondent

Mr. R.R. Sharma, for the Applicants in CAA/1186/16.

Mr. Gauraj Shah, i/b Bharti Singh, a/w Shantany Chandratre, for the
Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 21st November 2016

ORDER :

1. Civil Application No. 1188 of 2016 is not on board.

Taken on board.

2. By this Civil Application, the applicants seek
modification of the order passed by this Court on 15th February 2016
dismissing the Appeal from Order arising out of the order passed by
the City Civil Court in the Notice of Motion filed by the respondent

(original plaintiff).

3. On 28th January 2015, the City Civil Court had passed a detailed order in the Notice of Motion filed by the original plaintiff, who is father of the applicant No. 1 and father in law of the applicant No. 2 *inter alia* making Notice of Motion No. 2681 of 2014 absolute in terms of prayer clause (a).

4. The applicants impugned the said order before this Court in Appeal from Order No. 215 of 2015. By an order dated 15th February 2016 passed by this Court the said Appeal from Order No. 215 of 2015 came to be dismissed after recording detailed reasons and after considering the submissions made by both the parties. The applicants filed Special Leave Petition against the order dated 15th February 2016 (Special Leave Petition No. 12475/16). The Hon'ble Supreme Court by an order dated 29th July 2016 permitted the applicants to withdraw the Special Leave Petition on the ground that the applicants would like to file an application in this Court for modification of the said order dated 15th February 2016.

5. The learned Counsel for the applicants drew my attention to the order passed by the Supreme Court and also order passed by this Court and Trial Court and submits that the learned

Advocate who was appointed to represent the applicants before the learned Trial Court as well as before this Court, did not make submissions properly before this Court and did not invite the attention of this Court as well as the learned Trial Judge to the voluminous documents. He submits that if the applicants are directed to vacate the suit premises, which were alleged to be in possession of the applicants since the date of inception of the acquisition of the suit premises, the applicants would be on the streets. He submits that the suit premises were actually owned by the applicants and not the respondent, who is father of the applicant No. 1.

6. A perusal of the order passed by the Supreme Court indicates that the Supreme Court permitted the applicants to withdraw the Special Leave Petition filed against the order passed by this Court on 18th February 2016 and recorded the statement of the applicants that the applicants sought to apply for modification of the said order dated 15th February 2016 passed by this Court.

7. The applicants have not even applied for condonation of delay in filing this Petition.

8. A perusal of the order passed by the Trial Judge as well as this Court, clearly indicates that both the orders were passed after

hearing both the parties and after recording detailed reasons. No case is made out by the applicants for modification of the order passed by this Court.

9. In my *prima facie* view, the applicants committed gross contempt of the order dated 15th February 2016 in not complying with the order passed by the Trial Judge and is confirmed by this Court on 15th February 2016 on the one and the other ground. The respondent has already filed the contempt proceedings (Contempt Petition No. 130 of 2016) against the applicants.

10. My attention is invited to an order dated 1st September 2016 passed by this Court in the said Contempt Petition No. 130 of 2016 by the learned Counsel appearing for the respondent taking a *prima facie* view that the applicants herein are not at all intending to obey and comply with the order passed by this Court. This Court has already issued a show cause notice upon the applicants. This Court has also rejected the submissions of the learned Counsel for the applicants alleging fraud against the previous Advocate of the applicants. It is clear that only after this Court had issued a show cause notice upon the applicants in the said Contempt Petition, the applicants have preferred this Civil Application for

modification of the order passed by this Court on 28th January 2015.

11. Upon raising a query by this Court, the learned Counsel for the applicants is not agreeable even now that his clients would comply with the order passed by this Court.

12. The respondent has already filed separate Civil Application No. 1186 of 2016 against the applicants *inter alia* praying for an order for direction to the Police Authority to assist the respondent in seeking enforcement of the order dated 15th February 2016 passed by this Court and for other reliefs.

13. The learned Counsel for the respondent, in my view, has rightly urged before this Court that the applicants have no respect of the order passed by this Court and has no intention to comply with the said order.

14. In my view, the Civil Application filed by applicants for modification of the order is totally misconceived and is an attempt to commit further breach of the order passed by this Court.

15. I therefore, pass the following order:-

(a) The Civil Application No. 1186 of 2016 is

dismissed, with costs as quantified to Rs. 25,000/- (Rupees Twenty Five Thousand only) which shall be paid by the applicants to the respondent within one week from today.

- (b) The Civil Application No. 1188 of 2016 is made absolute in terms of prayer clause (a).
- (c) The applicants are directed to vacate the suit premises within one week from today and handover possession thereof to the respondent. It is made clear that if the suit premises is not vacated and an exclusive possession thereof is not handed over to the respondent within one week from today, the local Police Station to take the forcible possession thereof from the applicants immediately thereafter and handover the same to the respondent.
- (d) Parties as well as the concerned Police Station to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]