

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 1343 OF 2016
IN
Writ Petition No. 7506 OF 2015

M/s. Sirsiwala Realty ...Applicant

Versus

Mr. Gyasuddin Kifayatulla Zariwala
And Ors.

...Respondents

....
Mr. Manoj Harit i/b. M/s. Manoj Harit & Co. for the Applicant.
Ms. Manisha B. Gawde, Advocate for Respondent No.1.
....

CORAM : R. G. KETKAR, J.

DATE : 27th July, 2016

P.C.

1. Not on board. At the request of Mr. Harit, taken up in the production board.
2. Heard Mr. Manoj Harit, learned Counsel for the applicant and Ms. Manisha Gawde, learned Counsel for respondent No.1, at length.
3. The applicants have prayed for following reliefs:

“a) this Hon'ble Court may be pleased to allow the present Application, in consideration of the facts narrated hereinabove; and expedite the hearing by fixing a short date for the final hearing of the four Writ Petitions being – WP

No. 7506 of 2015, 10967 of 2014, 10968 of 2014 and WP No.2888 of 2015;

In the alternative,

- b) this Hon'ble Court may be pleased to stay the further proceeding in all the pending Suits before the Ld. Trial Court of Small Causes as mentioned in "**Exhibit-F**" to the application;
- c) Ad-interim reliefs in terms of prayer clause (b);"

4. By prayer clause (a), the applicants have prayed for fixing the petitions finally by giving peremptory date. The petitions are of the years 2014 and 2015. In the alternative, the applicants have prayed for staying the further proceedings of pending suits before the learned trial Court as mentioned in Exhibit-F to the application.

5. Perused the orders dated 3.8.2015 and 18.12.2015. While issuing Rule on 3.8.2015 this Court only stayed the impugned orders whereby the applicants were allowed to be impleaded in the suit. In other words, this Court did not stay the further proceedings of the suit.

6. By subsequent order dated 18.12.2015 passed in Civil Application No.3154/2015 in Writ Petition No.2888/2015, this Court recorded that after arguing the application for sometime, learned Counsel for the applicant sought withdrawal of Civil

Application with liberty to file fresh application in terms of order dated 3.8.2015 as and when occasion arises. The application was accordingly allowed to be withdrawn with liberty as prayed for. It was, however, clarified that there is no stay of the proceedings granted by way of interim relief in the above petition and the trial Court is free to proceed with the suit in question.

7. Mr. Harit relied upon order dated 17.12.2014 passed by this Court in Writ Petition No.10968/2014. By that order, notice was issued to the respondents returnable after 12 weeks and till further orders the further proceedings of R.A.E & R. Suit No.124/210 of 2008 pending in Small Causes Court, Mumbai were stayed. By subsequent order dated 18.12.2015 passed in Writ Petition No.10967/2014 with Writ Petition No.10968/2014, this Court vacated the stay of proceedings granted vide order dated 17.12.2014 and only stayed the order dated 5.11.2015 allowing the applications for impleadment of the applicants herein in the suit.

8. In view of orders dated 3.8.2015, 18.12.2015 in C.A. No.3154/2015 in W.P. No.2888/2015 as also order dated 18.12.2015 in W.P. Nos.10967/2014 & 10968/2014, I do not find

that the applicants have made out case for granting the relief in terms of prayer clause (b). Reliance placed on the order dated 17.12.2014 does not advance the case of the applicants as basically the stay to the further proceedings was granted till further orders and by subsequent order dated 18.12.2015 the stay was vacated. Application fails and the same is dismissed. List the Writ Petition for directions on 5.8.2016 at 3:00 p.m.

(R. G. KETKAR, J.)

Deshmane (PS)