

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

**REVIEW PETITION NO. 4 OF 2016
IN
APPEAL FROM ORDER NO. 1138 OF 2015**

Vinod Vithoba Shivalkar
& Ors.

..... Petitioners

Versus

Prakash V. Shivalkar & Ors.

..... Respondents

Mr. Shakeeb Shaikh, I/b S. B. Legal Prop. S. G. Bane, for Petitioners
None for the Respondents.

***CORAM : N. M. Jamdar J.
Wednesday 20 July, 2016***

P. C.

. Not on Board. Taken on production board by way of
praecipe.

2. The petition is taken out for review of the order dated
28 March, 2016. By order dated 28 March, 2016, the Appeal from
Order filed by the Review Petitioner/Appellant was dismissed. The
appellant had challenged the order passed by the City Civil Court at
Bombay dismissing his Notice of Motion.

3. The parties are related to each other. The appellant and the respondent no. 1 are brothers. The Notice of Motion was taken out to restrain the Developer from putting respondent no. 1 alone in occupation of the premises and paying monthly compensation amount towards alternate temporary accommodation. The learned City Civil Court after considering the material came to conclusion that the said injunction cannot be granted. By dismissing the appeal, this discretionary order was not interfered with.

4. That the respondent no. 1 was occupying the premises at the relevant time was not disputed. It is the contention of the Review Petitioner that he was also staying in the said premises. Even if this position is accepted, it is purchased by way of interim arrangement that the respondent no. 1 is given temporary accommodation since it is subject to final outcome of the appeal. There is no error for which a review jurisdiction can be invoked.

5. The learned Counsel for the Review Petitioner submitted that the financial condition of the Review Petitioner is not sound, and therefore, monthly compensation should not be given to the respondent no. 1. No such argument was advanced before the City Civil Court or before this Court earlier. The only argument that is advanced is right of the respondent no. 1 to place

in the suit premises. The temporary accommodation of the respondent no. 1 is already made subject to the outcome of the suit.

6. If there are any further subsequent developments by which the financial condition of the Review Petitioner has suffered due to which he is in dire need of the amount of compensation, the order under review being interlocutory order and the suit pending, the Review Petitioner can always take out the Notice of Motion for appropriate relief to be considered on its own merits. The Review Petition therefore cannot be entertained and is rejected.

7. It is always open to the petitioner to make a request to the learned City Civil Judge for expeditious disposal of the suit.

(N. M. Jamdar, J.)