

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1185 OF 2015
WITH
CIVIL APPLICATION NO.3722 OF 2015

Ashok Raghunath Jukar and Others	... Appellants/ Ori. Defendants
vs.	
M/s. Walia Construction Company	... Respondent/ Ori. Plaintiff

Mr. Pankaj Kowli i/b. Mr. V.K. Damle, for the Appellants.
Mr. V. Mannadiar i/b. M/s. Mannadiar & Co., for the Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **21st JANUARY, 2016**

PC.:

. The Civil Application is moved for stay of the execution and implementation of the judgment and decree dated 7th August, 2015 passed by the learned Judge, City Civil Court, Greater Bombay in Suit No. 9461 of 1989.

2. The learned counsel for the Appellants submitted that the Respondent i.e. original Plaintiff has failed to show their readiness and willingness to perform their obligation. The learned Judge has

not taken into account that major portion of the consideration which was agreed as 17 lacs was not paid as per the agreed terms and conditions of the contract dated 9th December, 1985. The notice of demand of money was sent by the Appellants in the month of March, 1986 however, the notices were not replied and thus the Appellants have good case on merit. Hence, the impugned order be stayed.

3. The learned counsel for the Respondent-Plaintiff opposed the application for stay. He supported the judgment and decree passed by the trial Court. He submits that if during the pendency of the Appeal, the Appellants creates third party interest then the property will not be preserved and there will be multiplication of litigation.

4. The Suit was for specific performance of the contract in respect of suit land. Considering the nature of the case and the issue involved therein, it is necessary to stay the execution and implementation of the impugned judgment and decree otherwise the Appeal will become infructuous. Hence, the impugned judgment and decree is hereby stayed pending Appeal.

5. The submissions of learned counsel for the Respondent are correct. The Appellants shall not create any third party interest and shall not part with the possession and create any encumbrances of any nature in respect of the suit property.

6. The learned counsel for the Appellants submit that he be allowed to file private paper book so that he can pray for expediting the Appeal. The Appellants to file private paper book within six months from today. Printing is dispensed with.

7. Accordingly, the stay Application stands disposed of.

(MRS.MRIDULA BHATKAR, J.)