

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4687 OF 2016
in
FIRST APPEAL NO.2065 OF 2005

The State of Maharashtra .. Applicant
vs
Sau Sumanbai Tile .. Respondents

Mr.Yogesh Dabke AGP for Applicant
None for Respondents

CORAM: G.S.KULKARNI, J
DATE: 30 NOVEMBER 2016

P.C.

1. Not on board. Taken on board on a praecipe as moved on behalf of the applicant.
2. Heard learned AGP for the applicant. He states that the respondents in this civil application are served as also the name of the advocate for the respondents is correctly displayed on board. However, none appears for respondents.
3. This application has been filed for the following reliefs :
 - a) "Rule be issued;
 - b) that this Hon'ble Court be pleased to condone the delay if any, in preferring above mentioned Civil Application;
 - c) that this Hon'ble Court be pleased to recall the order dated 6.5.2016;
 - d) that this Hon'ble Court be pleased to stay the impugned judgment and Award dated 21.6.2002 passed by the Extra Joint

District Judge and Member MACT, Nasik;

e) any other order as this Hon'ble Court may deem fit in the interest of justice be passed.”

4. Prayer (b) above concerns an order passed by this Court in Civil Application No. 3132 of 2003 as filed on behalf of the applicant, which is stated to be dismissed by this Court by the following order:

Coram: Smt R.P.SondurBaldota, J

Date: 6.5.2016

P.C.

“The order dated 1st February 2006 passed on the civil application directed the applicant/State to deposit the balance decretal amount within a period of four weeks from the date of that order. There is nothing on record to indicate that the amount has been so deposited. The order further records that otherwise the stay granted to the impugned decree shall stand automatically vacated. In view of the order, the civil application is dismissed for non-compliance of the condition.”

5. It is stated that though the above order records that there is nothing on record to indicate that the amount was deposited, the amount was in fact deposited on 17.12.2013 and receipt to that effect was issued by the trial Court. It is thus submitted that the decretal amount is already deposited before the trial Court prior to order dated 1.2.2006 and that an amount of Rs.36,500/- was deposited on 7.11.2003. The balance amount of Rs.12,500/- was also deposited thereafter on 5.12.2003 in respect of which receipt

dated 17.12.2003 has been issued. It is therefore, submitted that order dated 6.5.2016 needs to be recalled.

6. Averments as made in the application are not disputed by the respondents. As the amount has been deposited and which appears to have not been brought to the notice of the Court and eventually the Court proceeded to pass an order dated 6.5.2016, it is in the interest of justice order dated 6.5.2016 is recalled. Ordered accordingly. As the amount of Rs.36,500/- was already permitted to be withdrawn by an order dated 1.2.2006 by furnishing security to the satisfaction of the lower Court, there is no need at this stage to consider prayers made in prayer clause (d). Respondents will be at liberty to make an application for withdrawal of the said amount which shall be considered on its own merits.

Civil Application is accordingly partly allowed in terms of prayer clause (b) and (c). No costs.

{G.S.KULKARNI, J}

Rng

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