

Anand

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

**REVIEW PETITION NO.32 OF 2017
IN
WRIT PETITION NO.4117 OF 2016**

Hansraj Vasant More .Petitioner

Vs.

Pramod alias Prabhakar Damodar More & ors. .Respondents

Mr.Sudipto Ghosal, Advocate, for the Petitioner in Review Petition and
for the Respondent No.2 in W.P.No.4117 of 2016

Mr.Sanskar Marathe, Advocate, for the Petitioners in W.P.No.4117 of
2016

CORAM : R.G.KETKAR, J.

DATE : 24.03.2017

P.C.

. Heard Mr.Ghosal, learned counsel for the Petitioner and
Mr. Marathe, learned counsel for the Petitioners in W.P.No.4117 of 2016
at length.

2. Rule. Mr. Marathe waives service on behalf of the
Respondents. Having regard to the narrow controversy raised in this
Petition as also at the request and by consent of the parties, Rule is
made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Section 114 r/w. XLVII, Rule 1 of the Code of Civil Procedure, 1908 (For short “CPC”), Petitioner, who is the Respondent No.2 in the main Petition seeks review of the Order dated 08.12.2016 passed by this Court in W.P.No.4117 of 2016. In particular, Petitioner has sought review of the last sentence of paragraph 8 of the Order which reads thus :-

“8. In the meantime, let partition proceedings go on. However, partition by metes and bounds shall not be effected and possession of the respective parties shall not be disturbed.”

4. Mr. Ghosal submitted that Writ Petition is filed challenging the Order dated 23.06.2015 passed below Exhibits 106 & 107, 132 & 141 and Order dated 30.01.2016 below Exh.156. By Order dated 23.06.2015, the learned trial Judge rejected the Applications. By Order dated 30.01.2016, the learned trial Judge rejected the Petition seeking review of the Order dated 23.06.2015. He submitted that the subject matter of the Orders dated 23.06.2015 & 30.10.2016 is flat at Borivali. Because of the last part of paragraph 8 of the Order under review, the learned trial Judge has, by Order dated 19.12.2016 re-called possession warrant issued in respect of House No.863. The warrant of possession was issued three times in respect of House No.863. The said flat is not

the subject matter of the Orders dated 23.06.2015 & 30.10.2016. On the basis of the Order dated 08.12.2016 passed by this Court in the above Petition, the learned trial Judge has re-called possession warrant in respect of House No.863. He, therefore, submitted that the last sentence of paragraph 8 may be modified so as to enable the executing Court to proceed with the execution proceedings for effecting partition by metes and bounds save and except flat at Borivali.

5. On the other hand, Mr. Marathe invited my attention to paragraph 4 of the Order dated 08.12.2016. He submitted that flat No.5 is wrongly mentioned in that paragraph. In view thereof, flat No.5 appearing in paragraph 4 of the Order dated 08.12.2016 shall stand substituted by the words “flat at Borivali”. Insofar as modification suggested by Mr. Ghosal is concerned, Mr. Marathe submitted that partition in respect of flat at Borivali may also be allowed to go on subject to not disturbing possession of the party of that flat. Mr. Ghosal submitted that same shall be made subject to the outcome of the main Petition.

6. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on

record.

7. Writ Petition takes exception to the Orders dated 23.06.2015 & 30.10.2016. A perusal of subject matter of these Orders shows that it is in respect of flat at Borivali only. In view thereof, it is clarified that partition proceedings in respect of flat at Borivali will go on and possession of party in respect of flat at Borivali shall not be disturbed. This shall be subject to outcome of the Petition. It is clarified that this Court has not stayed execution proceedings in respect of other properties. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)