

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

**APPEAL FROM ORDER NO. 223 OF 2015
WITH
CIVIL APPLICATION NO.282 OF 2015
WITH
CIVIL APPLICATION NO. 668 OF 2017
IN
APPEAL FROM ORDER NO. 223 OF 2015**

Nandlal Gokul Kharwar
(since deceased)

Smt.Dharmadevi Nandlal Kharwar & Ors.

...Applicants/
Appellants

Versus

Salim Mohammed Daudani

...Respondent

**WITH
CIVIL APPLICATION NO.1286 OF 2015
IN
APPEAL FROM ORDER NO. 223 OF 2015**

Salim Mohammed Daudani

...Applicant

Versus

Nandlal Gokul Kharwar (since deceased)
Smt.Dharmadevi Nandlal Kharwar & Ors.

...Respondents

.....

Mr.Baptist D'souza for the Appellants.
Ms.Geeta Shastri i/b. Meva Lal Verma for the Respondents in AO.

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CORAM: MRS.MRIDULA BHATKAR, J.
DATED: NOVEMBER 20, 2017

P.C. :

1. This Appeal from Order is directed against the order dated 05.11.2014 passed by the learned Judge, City Civil Court, Mumbai, in Notice of Motion No. 3805 of 2011 in short cause suit no. 8606 of 1993. The learned Judge while allowing the said Notice of Motion has increased a royalty amount from Rs. 7000/- p.m. to Rs.14,000/-p.m. for running flour mill in the suit premises. The appellants were directed to deposit Rs. 14,000/- p.m. as the royalty for running flour mill in the suit premises from the date of filing of the notice of motion until further orders and to deposit the arrears of royalty within three months from the date of the order and hence, this Appeal.

2. The respondent/plaintiff has filed a Suit for declaration and injunction in respect of the suit shop wherein a flour mill is run by the appellants/defendants. By order dated 08.04.1993, the trial Court had appointed a Court Receiver and the appellants/defendants were acting as an agents of Receiver. Initially, the trial Court had fixed the royalty of Rs.3,500/- p.m., which was subsequently increased to Rs. 7,000/- p.m. and by order dated 05.11.2014, the trial Court has increased the royalty upto to Rs.14,000/- p.m.

3. While attending this Appeal from Order, the learned counsel for the appellants/defendants has submitted that the appellants

have taken out one Civil Application No. 668 of 2017 praying that the earlier orders dated 08.04.1993, 25.09.2002 and 23.08.2011 passed by the trial Court are to be set aside. He has further submitted that the appellants have serious grievance against their earlier Advocate that he has played fraud on them. He has further submitted that the appellants have made an application to the Bar Council of Maharashtra and Goa against their earlier Advocate that their Advocate suppressed very important documents, which they want to bring on record.

4. Learned counsel for the respondent/plaintiff has submitted that as on today, the arrears of Rs. 4,47,000/- is due from the appellants/defendants.

5. Heard submissions. Considering the facts and circumstances of the orders under challenge, such Civil Application challenging the orders is not maintainable. I maintain the order dated 05.11.2014 passed by the learned Judge, City Civil Court, Mumbai, with following directions:

- (i) The appellants/defendants are directed to deposit an amount of Rs.1,00,000/- (Rs. One Lakh only) on or before 11.12.2017 and further amount of Rs. 1,00,000/- (Rs. One Lakh only) is to be deposited on or before 08.01.2018 in the trial Court.

- (ii) It is further directed that the appellants/defendants shall deposit an amount of Rs. 14,000/- p.m. towards royalty from 01.01.2018. The said amount is to be paid on or before 10th day of each month.
 - (iii) The trial Court to take note that if the amount is not deposited within stipulated time, then they may pass appropriate orders if such fact is pointed out by the original plaintiff to the Court.
 - (iv) The trial Court to take note that the Suit is of 1993 and, therefore, may endeavor to expedite the Suit on or before 31.07.2018.
 - (v) The respondent/plaintiff is allowed to withdraw the amount deposited by the appellants/defendants. The respondent/plaintiff may move before the trial Court.
6. With this, Appeal from Order is disposed of accordingly. Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)