

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3085 OF 2016

Nandkishor Rasiklal Agarwal and another ... Petitioners
Vs.
M/s. Multimodal Freight Systems Pvt. Ltd. and another... Respondents

Mr. Piyush Raheja a/w. Mr. S. B. Rao and Ms Guari S. Rao for Petitioners.
Mr. S. A. Abhyankar for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 27, 2017

P.C. :

Heard Mr. Raheja, learned Counsel for petitioners and
Mr. Abhyankar, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 30.01.2015 passed by the learned Judge, City Civil Court, Greater Bombay in Notice of Motion No.4598 of 2014 in Review Petition No.3 of 2015. By that order, the learned trial Judge partly allowed the Motion No.4598 of 2014 in terms of prayer clause (a) and dismissed Notice of Motion No.76 of 2015 taken out by the petitioners herein for injunction restraining execution initiated by Execution Petition No.619 of 2014 and staying order dated 14.07.2014 passed in Contempt Notice of Motion No.3563 of 2012.

3. By order dated 11.12.2009 passed by this Court in Notice of Motion No.3685 of 2007 filed by respondent No.1-plaintiff, undertaking was given by the respondent No.2 herein, which was accepted. The said order reads thus,

“Mr. Bohra, the learned counsel appearing on behalf of the defendant states that no further encumbrance shall be created in

respect of the property referred to in the Notice of Motion. The statement is made without prejudice to the rights and contention of the defendants including as to the entitlement of the plaintiff to enforce a security in the Summary Suit. The statement is accepted. In view thereof, no further orders are necessary. The notice of motion is accordingly disposed of.”

4. It is the case of the plaintiff that notwithstanding undertaking given by the respondent No.2, by registered conveyance dated 13.06.2011, respondent No.2 sold units No.301 and 302 in favour of the petitioners herein. Respondents, therefore, took out Contempt Notice of Motion No.3563 of 2012. By order dated 16.07.2014, the learned trial Judge allowed that Motion in terms of prayer clause (b) and declared that agreement of sale dated 13.06.2011 executed between the petitioners herein and respondent No.2 and lodged for registration with Sub Registrar Assurance, Andheri at Sr. No.6467, 6468 in respect of property, namely, SD-301 and D-302, Crystal Plaza, New Link Road, Andheri (West), Mumbai 400 053 is null and void. Petitioners herein took out Notice of Motion No.4598 of 2014 for condoning the delay in filing the Review Petition against the order dated 16.07.2014 passed in Notice of Motion No.3563 of 2012 and for injunction restraining the execution and implementation of order dated 16.07.2014 in Contempt Notice of Motion No.3563 of 2012. By the impugned order, the learned trial Judge has allowed the Motion in terms of prayer clause (a) only thereby condoning the delay in filing the Review Petition.

5. As far as prayer for staying execution is concerned, that was rejected by the trial Court. At the same time, the learned trial Judge also dismissed Notice of Motion No.76 of 2015 taken out by the petitioners herein for injunction restraining execution initiated by Execution Petition No.619 of 2014 and staying order dated 14.07.2014 passed in Contempt Notice of Motion No.3563 of 2012.

6. Matter was heard on 01.03.2016 and this Court continued ad-interim order granted on 07.07.2015, which was continued by subsequent order dated 16.02.2016 subject to the direction to the petitioners to maintain status quo in respect of the suit property namely, units No.301 and 302. It is common ground between the parties that the learned trial Judge has fixed the hearing of the Review Petition on 18.02.2017. In view thereof, in my opinion, ends of justice will be served by directing the learned trial Judge to dispose of the Review Petition on or before 28.02.2017. Till such time, the ad-interim order granted on 01.03.2016 is continued. Petitioners are also directed to maintain status-quo in respect of the suit property. All contentions of the parties on merits are expressly kept open. Petition is disposed of accordingly.

(R. G. KETKAR, J.)

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