

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 13239 OF 2016

Nikul J. Dhulesiya & Anr.

... Petitioners

Vs.

Smt. Komal S. Sharma & Anr.

... Respondents

Mr. Ashutosh R. Gole, Advocate for the petitioner.

Mr. Indrajit Mukherjee, Deputy G.M.(Legal), ARCIL-ARMS is present.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 4th April, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and disposed of.

2. Today legal head of ARCIL is present and he informs the Court that he has authority and power to appear and argue the matter on behalf of the company. He produces the photocopy of his identity card, which is taken on record.

3. This Petition is directed against the judgment and order dated 21st September, 2016 wherein the Application filed by the petitioners/decreed holders permitting them to withdraw the amount deposited by them in the Court, is rejected. The suit filed by the

petitioners/deed holders for specific performance is partly decreed, however, that order is challenged by the defendants/present respondent nos. 1 and 2 before the trial Court, as decree is obtained by fraud. The Application for condonation of delay along with the Application filed under Order IX Rule 13 of Code of Civil Procedure are pending before the trial Court. In between, as there is no stay to the execution proceedings, the petitioners/plaintiffs have taken steps as per the judgment and order dated 29th April, 2010 passed by the trial Court, Thane. As per the directions in the said judgment and order, the petitioners have deposited the amount and as per the submissions of learned counsel for the petitioners, the said amount is Rs.5,11,609/-.

4. My predecessor, by order dated 24th March, 2017, have recorded all the material facts, as the learned counsel for respondent No. 1/original defendant was present and made statement, which is as under:

“He submitted that without prejudice to the rights and contentions of judgment debtors Nos.1 and 2, the decree holders may be permitted to deposit the amount with ARCIL and ARCII may be in turn directed to deposit original documents in the trial Court so as to retain it in safe custody. He further submitted that the learned trial Judge may be directed to pass appropriate order while

deciding application for condonation of delay and/or application under Order IX Rule 13 of C.P.C. in relation to the amounts deposited by the decree holders as also by judgment debtors nos. 1 and 2 as also original documents to be transmitted to the trial Court. He makes these statements on the basis of the instructions from respondent No. 2 who is present in the Court. He has tendered photocopy of Aadhaar Card of respondent No. 2, which is taken on record and marked 'X' for identification. Statements made by the learned counsel for the parties are recorded."

5. In view of this, my predecessor has issued notice to respondent No. 5, pursuant to which, respondent no. 5 is present. None present for respondent nos. 1 and 2. However, pursuant to the order dated 24th March, 2017, as it is the partial execution, without prejudice to the rights and contentions of respondent nos. 1 and 2, that is subject to the order of Application for condonation of delay and/or application under Order IX Rule 13 of C.P.C. -

(i) The trial Court is allowed to transmit the amount deposited by the petitioners/decreed holders along with accrued interest to respondent No. 5/ARCIL and the amount is to be adjusted in the loan account of respondent nos. 1 and 2.

(ii) The balance amount as mentioned in the earlier order is to be deposited by the petitioners with ARCIL till

15th May, 2017.

(iii) ARCIL to deposit the documents with the Executing Court and subsequently can be deposited with the trial Court.

(iv) So far as the petitioners is concerned, the payment of money is subject to further orders of the trial Court.

6. Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)