

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

**REVIEW PETITION NO.1 OF 2017
IN
APPEAL FROM ORDER NO.630 OF 2016**

Sharada Anant Deshmukh	..	Petitioner
Vs.		
M/s.Himax Developers Pvt. Ltd. & Ors.	..	Respondents

Ms.Gouri Godse for the petitioner.

Mr.Vishal Shriyan i/by M/s.Khaitan & Co. for the respondent no.1/
original appellant.

Mr.Vinod Shinde for the respondent no.2.

Mr.Idris M. Vohra for the respondent nos.3 to 8 and 10.

Mr.Saurabh Oka for the respondent no.11.

CORAM : R.D. DHANUKA, J.
DATE : 16th January 2017

P.C.

. By this review petition, the review petitioner (original respondent no.10 in Appeal from Order Nos.630 of 2016 and 629 of 2016 and the plaintiff in the Special Civil Suit.35 of 2014 filed by her) seeks review of the judgment and order dated 27th October 2016 in so far as the direction issued by this Court to the review petitioner to file an undertaking before the learned trial Court within four weeks from the date of the said order to the effect that if the original appellant succeeds in two suits including the suit filed by the review petitioner herein or counter claim, if any, filed by the original appellant and if any amount is directed to be paid by the review petitioner herein in those two suits and counter claim, she will pay the said amount to the original appellant as may be directed.

2. Learned counsel for the review petitioner submits that in the Special Leave Petition filed by Jagannath Yashwant Deshmukh and others and also the review petitioner, the Supreme Court on 18th December 2014 had made it clear that creation of any kind of third party shall remain stayed in the meantime. It was also made clear that construction to be made by the original appellant i.e. the respondent no.1 herein shall be at its own risk and it shall not claim any equitable rights upon the plaintiff. She submits that the review petitioner had not agreed to give any such undertaking or to provide any such security regarding amount of compensation if found due against the review petitioner. She submits that the order directing the review petitioner to furnish an undertaking is contrary to the order passed by the Supreme Court on 18th December 2014 and would create equity in favour of the original appellant.

3. Learned counsel appearing for the original appellant, on the other hand, invited my attention to paragraphs 72 and 100 of the judgment and order dated 27th October 2016 and would submit that though the review petitioner had made a statement before this Court that she was not agreeable to furnish such security, this Court, with a view to protect the interests of the original appellant, has directed the review petitioner to file an undertaking in paragraph 100 of the said order passed by this Court. He also invited my attention to the averments made in paragraph 6 of the review petition. He submits that there is no error apparent on the face of the record of the judgment and order dated 27th October 2016 as canvassed in paragraph 6 of the review petition.

4. It is not in dispute that the review petitioner had not agreed to render any such undertaking and to furnish any such security before this Court. However, since injunction granted by the learned trial Judge was being confirmed by the said judgment and order rendered by this Court which was also in favour of the review petitioner, this Court had felt it appropriate to issue such direction not only against the original plaintiff in Regular Civil Suit No.10 of 2009, but also the review petitioner (original plaintiff in Special Civil Suit No.35 of 2014). In my view, there is no error apparent on the face of the record. If the review petitioner is aggrieved by any direction issued by the said judgment and order, the remedy of the review petitioner would be to file Special Leave Petition and not a review petition.

5. The review petition is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.