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* 1/4 * WPL-2938-2017 (SR. 911)
Wednesday, 1.11.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2938 OF 2017

Abhay K. Shah and Ors.

....Petitioners

V/s.

Dewan Housing and 7 Ors.

....Respondents

* * * * *

Dr. Birendra Saraf a/w. Mr. Bipin Joshi and Mr. Ranjeev
Carvalho and Mr. Prayag Joshi, Advocate for the
petitioners.

Mr. R.L. Motwani, Advocate for respondent no.1.

CORAM :-

B.R.GAVAI &

SANDEEP K. SHINDE, JJ.

DATE :-

1st NOVEMBER, 2017.

P.C. :-

1. Rule. Rule made returnable forthwith. Heard
by consent.

2. The petition challenges the order dated 24th
October, 2017 vide which the application filed by the
present petitioners for extension of interim protection
came to be rejected.

3. The petition arises out of peculiar facts and circumstances. It appears that the petitioners had purchased secured assets with no-objection of the respondent, bank. It is the contention of the petitioners that, though the petitioners paid an amount of Rs.3 crores to the bank, it received a restraint order from the Income-Tax Department directing the petitioners not to make the payment. However, the Bank had taken steps for taking possession of the property on account of non-payment of the amount.

4. The petitioners therefore filed a scrutiny application. Alongwith the said application, an application for inter-locutory order came to be filed. The same was rejected by order dated 2nd June, 2017. The same was challenged by way of Miscellaneous Appeal before the Learned Debt Recovery Appellate Tribunal (DRAT). Initially, the learned DRAT had granted stay subject to the condition of deposit of Rs.5 crores. When the matter was listed on 23rd October, 2014 the Counsel for the petitioners was not present and as such the matter

was adjourned to 18th December, 2017 under the caption of 'dismissal'.

5. However, since interim protection was not continued, the petitioners filed an application for extension of stay which came to be rejected by the Learned DRAT vide order dated 24th October, 2017. Hence, the present petition.

6. The Learned Counsel for the respondent, bank vehemently opposes the application. He submits that, the petitioners are even delaying the hearing of an waiver application. We find that on account of a mistake committed by a lawyer, a litigant should not be made to suffer. It is only on account of non-appearance by a lawyer on 23rd October, 2017, the interim stay which was granted earlier was not continued. The petitioners have moved an application immediately on the next day. In that view of the matter, we find that the impugned order needs to be quashed and set aside and the interim protection continued till the disposal of the waiver application.

7. In that view of the matter, we find that the following order needs to be passed in the interest of justice. The order dated 24th October, 2017 is set aside. The stay which was granted earlier shall continue to operate till the disposal of the waiver and stay application.

8. It is however made clear that, the waiver and the stay application will be decided by the Learned Tribunal, as expeditiously as possible and in any event, within a period of four weeks from today.

9. It is made clear that, if any adjournments are sought by the petitioners in the proceedings before the Learned Tribunal, the Learned Tribunal will be free to draw an adverse inference and pass appropriate orders.

10. Rule is made absolute in aforesaid terms with no orders as to costs.

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)