

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR**

**CIVIL APPLICATION (C) NO.22 OF 2017
IN
CIVIL REVISION APPLICATION NO. 14 OF 2015**

1. SHRI. HEMANT S/O VISHVESHWAR
DESHPANDE, aged 55 years,
Occ: Service,
2. SHRI. WASUDEO S/O VISHVESHWAR
DESHPANDE, aged 46 years,
Occ: Business,

Both R/o Deshpande Wada,
Nagoba Galli, Badkas Chowk,
Mahal, Nagpur.

..APPELLANTS

VERSUS

SHRI. VINAY S/O VISHVESHWAR
DESHPANDE, aged 50 years,
Occ: Service,
R/o. Deshpande Wada, Nagoba
Galli, Badkas Chowk, Mahal,
Nagpur.

..RESPONDENT

Mr S.B. Walekar, Advocate for appellants;
Mrs Madhavi Amit Khare, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 6th APRIL, 2017

ORAL ORDER :

By judgment and order dated 11th July,
2014 in a suit being Regular Civil Suit No. 50 of
2012 under Section 6 of the Specific Relief Act for

(2)

possession, learned Civil Judge, Senior Division, Nagpur directed the present appellants to hand over possession of the suit property to the respondent within 15 days.

2. Vide order dated 1st February, 2016, this Court has admitted the revision application and stayed judgment impugned on condition that the amount of Rs.3000/- per month be deposited with Registry of this Court before 10th of every month.

3. It is claimed by the applicants – original defendants that for the month of February, 2017, cheque of Rs.3000/- was paid at somewhat belated stage. As such, in view of conditional order, stay stood vacated.

4. Learned Counsel for the applicants-defendants, as such, taken out application for continuation of stay on such conditions which this Court may deem fit and proper.

5. Learned Counsel for the respondent –

(3)

original plaintiff submits that on 1st February, 2016 when the stay was granted, respondent was not heard. Apart from above, she submits that throughout pendency of the suit, her client remained in possession of the suit property.

6. It is required to be noted that on 1st February, 2016, this Court has admitted revision and passed order of stay in favour of the applicants, since no application is taken out by the respondent for vacation of stay.

7. Be that as it may. It is then to be noted that it is the respondent, who has filed suit for possession under Section 6 of the Specific Relief Act stating that respondent's possession was disturbed.

8. In view of above, the claim of learned Counsel for the respondent that respondent remained in possession of the suit property does not hold any substance.

(4)

9. In my opinion, by way of last chance to the present applicants, application needs to be granted. Stay order passed by this Court stands restored along with condition as is incorporated in the order dated 1st February, 2016, subject to condition that present applicants shall pay costs of Rs.1500/- (Rs. One thousand and five hundred only) to the respondent within a period of one week from today. The receipt to that effect be produced before this Court.

10. The hearing of civil revision application is expedited.

11. Civil Application stands allowed in above terms.

(N.W. SAMBRE, J.)

Tupe