

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

WRIT PETITION NO. 13671 OF 2017
WITH
CIVIL APPLICATION NO.4230 OF 2018
IN WP/13671/2017
WITH
CIVIL APPLICATION NO.4728 OF 2018
IN WP/13671/2017

INDIA INFOLINE MARKETING SERVICE LIMITED THROUGH ITS DULY
AUTHORIZED OFFICER
VERSUS
RAKESH PUKHRAJ RATHOD AND OTHERS

...
Advocate for the Petitioner : Shri Sanket S. Kulkarni h/f Smt.Rashmi S.
Kulkarni.

Advocate for Respondents 1 and 2 : Shri Navandar Manish N..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th November, 2018

Per Court:

1 This Court (Coram : V.K.Jadhav, J.) has passed an order on
27.11.2017, which reads as under :-

- "1. *Heard.*
2. *Issue notice to the Respondents, returnable on 8.1.2018.*
3. *Learned counsel for the petitioner submits that, learned District Judge-2, Bhusawal has refused to consider the stay petition by referring the provisions under Order 41 Rule 3-A(3) of Civil Procedure Code. Learned counsel submits that, the District Judge has ignored the High Court amendment of*

Sub-rule (3) of Rule 3 of Order 41 which reads as under :-

Rule-3:- "Where an application has been made under Sub-rule (1), the court may for sufficient cause make an order for the stay of execution of the decree against which the appeal is proposed to be filed."

4. Learned counsel submits that, the District Judge-2, Bhusawal has relied upon certain cases of the State wherein identical amendment is not carried out of sub-rule (3) of Rule 3-A of Order 41. Learned counsel for the petitioner-original defendant submits that the judgment and decree passed in the suit is an ex-parte decree. Said decree is in two form. One is about recovery of possession and another one is in the form of money decree. Learned counsel submits that, petitioner is praying to stay the money decree and is not pressing his application for stay in respect of decree of possession passed by the trial court. Learned counsel submits that, petitioner is ready to deposit 50% of the amount of the decree under challenge in the pending execution petition and also ready to furnish surety before the lower appellate Court.
5. In view of the above, till the next date of hearing, the effect, execution and implementation of the judgment and decree passed in Special Civil Suit No.263/2014 is hereby stayed on the condition that the petitioner shall deposit 50% of the amount of money decree and to furnish surety to the extent of rest of the amount before the lower Appellate Court within a period of four weeks from today."

2 On 05.02.2018, a further order was passed, which reads as under :-

- "1. Heard.
2. In compliance with the order passed by this Court dated 27 th November, 2017, learned counsel for the petitioner submits that the petitioner has deposited 50% of the

amount before the lower appellate Court and is ready to furnish surety to the extent of the rest of the amount. The learned counsel submits that surety could not be furnished due to the reason that the respondents have insisted for local surety to be furnished by the petitioner. The learned counsel for the respondents, on instructions, submit that the respondents would not insist for local surety to be furnished and the petitioner shall comply with the order at least on the next date i.e. 15 th February, 2018 which is the date fixed by the lower appellate Court for further hearing. The learned counsel for the petitioner submits that on or before 15th February, 2018, the surety would be furnished before the lower appellate Court. In view of the above submission, stand over to 16 th February, 2018.

3. *Interim relief to continue till next date."*

3 On 27.04.2018, this Court noted that though the Petitioner has deposited 50% amount, the surety was not furnished to the satisfaction of the Appellate Court before whom an application for condonation of delay caused in filing the regular civil appeal is pending.

4 I have heard the learned Advocates for the respective sides.

5 Considering the above, this Writ Petition is disposed of by continuing the relief granted by this Court earlier, till the application for condonation of delay is decided, on the condition that the Petitioner/ Establishment shall tender a surety as is required by the Civil Manual along with such documents, which would indicate that the Petitioner owns the property and the property is still held by the Petitioner. Such documents shall be filed on or before 03.01.2019, failing which, the ad-

interim protection granted by this Court shall stand vacated automatically on 04.01.2019.

6 Needless to state, the Appellate Court would consider the surety papers and documents submitted by the Petitioner and would only scrutinize whether, they are in due deference to the above stated directions.

7 In view of disposal of the writ petition, the pending Civil Applications do not survive and stand disposed of.

kps

(RAVINDRA V. GHUGE, J.)