

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 3372 OF 2016
IN
FIRST APPEAL No. 1429 OF 2016

M/s. Oasis Shipping & Travel Agent & Ors. ... Applicants

Vs.

M/s. Raj Traders through the Prop.

Tushar M. Mehta & Ors.

... Respondents

Mr. Yogeshwar S. Bhate, Advocate for the appellants.

Mr. Piyush N. Shah, Advocate for respondent nos. 1A to 1C.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 6th February, 2018.

P.C.:

Leave to amend in the prayer clause.

2. The learned counsel for the applicants/defendants submitted that the suit is decreed ex-parte against the applicants and they were directed to pay an amount of Rs.45,37,200/- with interest @12% p.a. from the date of the suit till realization, within two months from the date of decree. This judgment and order dated 11th February, 2014 passed by the learned Judge of the learned Judge of the City Civil Court, Greater Mumbai in Suit No. 4438 of 2012 is under challenge. The plaintiff has filed the suit for damages claiming Rs.75 lakhs. The learned counsel submitted that he has taken out this Application for

stay of the said judgment and order and also further attachment proceedings of the immovable properties (i) Office at A-103, Jayant Apartments, Sahar Cargo Complex at Andheri and (ii) Residential house No. 62, Kanakia Bhavan, Swastik Apartment, JVPD Scheme, Vile Parle, Mumbai. He submitted that earlier the appellants have filed Writ Petition, so time was wasted. Thereafter they filed First Appeal on 5th May, 2016 in which Application for condonation of delay was allowed on 22nd August, 2016. He submitted that the properties were attached on 15th March, 2016 in the execution proceedings and now the respondents/original plaintiffs will go for auction on 20th February, 2018. He submitted that he has good case on merits and therefore, he has filed this Appeal for setting aside the ex-parte order under Order 9 Rule 13 of CPC.

3. Per contra, the learned counsel for the respondents/decreed holder has submitted that after attachment of the properties, the order warrant of sale was issued by Executing Court on 8th December, 2017 and pursuant to that, the properties are going to be auctioned on 20th February, 2018. He further submitted that the goods/bales of the plaintiff kept in the warehouse of the appellants/defendants were sold by the appellants without the

knowledge of the respondents and thus, has suffered great financial loss. The conditional order of stay to be passed.

4. Heard the submissions. Considered the facts of the case. It was submitted by the learned counsel for the appellants that after sale of bales, the appellants secured sale proceeds of Rs.2,87,800/-. The premises which are for attachment is office and residential premises of the appellants and the appellants have filed the Appeal challenging the ex-parte decree and the suit is not decided on merits. In view of this, following order is passed:

- (i) The auction fixed on 20th February, 2018 is hereby stayed;
- (ii) The appellants shall deposit 50% of the principal amount of decree in this Court within four weeks;
- (iii) The respondents/decreeholders are allowed to withdraw Rs.2,87,800/- along with interest of 12% p.a. from the date of judgment.

5. Civil Application is disposed of.

6. Place the First Appeal for admission on 6th March, 2018.

(MRIDULA BHATKAR, J.)