

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1395 OF 2014
IN
SECOND APPEAL NO. 574 OF 2014

M/s. Bhagyashri Builders & Ors ...Applicants

Versus

Mrs. Nirupama Navin Vasa ...Respondent

Mr. Swaroop Kawde, i/b Mr. Surel S. Shah, for the Applicants.
Mr. Piyush Toshnival, i/b A. V. Nikam, for the Respondent.

CORAM: N. M. JAMDAR, J
DATED: 19 JANUARY, 2018

PC:-

1. By this Application, the Applicants seek stay of the impugned order passed by the learned District Judge dated 29 January, 2014. The Appeal was dismissed by the learned District Judge.

2. On 17 October, 2015, the learned Single Judge (K. K. Tated, J.) directed the Applicant to file an Affidavit that they will not create third party rights in respect of the suit property. From perusal of this direction, it is clear that this was a condition precedent for consideration of Application seeking stay. For filing this Affidavit the Application is adjourned from

time to time from 28 October, 2015. Even on 1 July, 2016, an adjournment was granted to file an Affidavit. Thereafter the matter was adjourned at the request of the Applicants time and again. Till date, the Affidavit has not been filed. The learned Advocate for the Applicants seeks time. It is clear that it is just another request for adjournment. The Applicants are avoiding to file an Affidavit giving a commitment that they will not create third party rights even though Application is adjourned for the last three years. This conduct will have to be considered if the Applicant is seeking an equitable order from this Court.

3. In these circumstances, for the failure of the Applicant to commit to the Court that they will not create third party rights, the Civil Application cannot be considered and is accordingly rejected.

[N. M. JAMDAR, J.]