

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2647 OF 2018
IN
FIRST APPEAL (STAMP) NO. 26416 OF 2016**

Vijay B. Sharma .. Applicant

In the matter between

Vijay B. Sharma .. Appellant

Vs.

Chetnarayansingh Sitaramsingh .. Respondent

Mr. Vishal Kanade a/w. Mr. D. D. Singh for the Applicant.

Mr. Y. S. Bhate a/w. Upendra Lokegaonkar for the Respondent.

CORAM : K. K. SONAWANE, J.

DATE : 26th JULY, 2018.

P. C. :

1. Heard learned Counsel for the applicant-original defendant and learned Counsel for the respondent-original plaintiff.
2. Present Civil Application has been filed in the proceeding First Appeal (Stamp) No. 26416 of 2016. The applicant is seeking interim relief pending the First Appeal restraining respondent-original plaintiff from creating any third party right in the contentious suit property.
3. The respondent-original plaintiff initiated civil litigation bearing S. C. Suit No. 8438 of 1995 for specific performance of agreement dated 04.07.1994. Learned Trial Court after appreciating the entire facts and circumstances on record, decreed the suit. The defendant i.e. the present

applicant herein was directed to perform his part towards agreement in respect of contentious suit property bearing Survey No. 211 Hissa No. 1, CTS No. 1502 admeasuring 1286 sq. mtrs within a period of two months on depositing Rs.3 lakhs along with amount of interest @ 12% p.a. from the date of agreement till depositing the amount.

4. The impugned decree came to be passed in the month of September, 2013. The applicant-original defendant did not take any action to pursue the proceeding promptly, with due diligence. Learned Counsel for the applicant-original defendant contends that the brother of applicant-original defendant preferred an Appeal from Order being Constituted Attorney of the present applicant. But the co-ordinate Bench of this Court did not allow him to contest the dispute and turned down the reliefs claimed on behalf of brother of the present applicant-original defendant. Thereafter, the applicant himself filed the proposed First Appeal bearing No. 26416 of 2016 accompanied with Civil Application No. 4595 of 2016 for condonation of delay of 2 years 354 days to present appeal against the impugned Judgment and decree passed by the learned Trial Court. Pending the present Civil Application for condonation of delay, the applicant moved the present application seeking interim relief, restraining the respondent-original plaintiff i.e. decree holder for creating any third party right, title and interest etc. in the contentious suit property.

5. At this juncture, learned Counsel for the respondent-original plaintiff has brought to the notice of this Court that the impugned decree passed

by the learned Trial Court has already been executed in presence of applicant-original defendant himself and there is no propriety to grant interim relief sought pending Civil Application for condonation of delay to present an appeal against the impugned decree which has already executed in favour of decree holder-original plaintiff.

6. In view of aforesaid submission pertains to subsequent development and the slipshod attitude on the part of applicant to pursue the legal remedy before Court of law, I find it difficult to exercise discretion in favour of applicant. It appears that he has no any legal right to claim such nature of interim relief pending the Civil Application for condonation of delay. Moreover, there is an inordinate delay of near about 2 years to agitate validity and legality of decree passed by the learned Trial Court. It is also imperative to take into consideration that since inception there was no stay to the execution of decree passed favour of plaintiff. The executing Court has proceeded further and executed the decree as mentioned above. In such circumstances, there is no propriety to cause any interference in the legal right, title and interest acquired by the plaintiff-decree holder after execution of decree in regard to the suit property.

7. Accordingly the Civil Application stands dismissed. No order as to costs.

Arjun
Machhindra
Kadam

Digitally signed
by Arjun
Machhindra
Kadam
Date: 2018.07.31
13:25:02 +0530

[K. K. SONAWANE, J.]