

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

**CIVIL APPLICATION NO. 448 OF 2017
IN
CIVIL REVISION APPLICATION NO. 55 OF 2015**

Khushnuma Ibrahim Khan & Ors.	...	Applicants
V/s.		
Mohd. Mehtab Khan & Anr.	...	Respondents

- Mr.Rahul Nalicharia, Sr. Advocate a/w. Mr.Mayur Khandeparkar & Mr.Prashant Kamat i/b. M/s.A. Mehta Laljee & Co. for the Applicants.
- Mr.S.I. Memon for Respondent Nos.1 & 2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Applicants and the Respondents.

2] By this application, the Applicants are seeking the compliance of the order passed by this Court on 6th May, 2016. As per paragraph (6) of the order, it was directed as follows:

“The amount of Rs.25,000/- per month shall be deposited by the Applicants (Respondents herein) on or before 10th day of each month. In case, there are two defaults, the Respondents (Applicants herein) shall be at liberty to apply for vacating the interim injunction.”

3] It is submitted by learned counsel for the Applicants that, the Respondents has committed the default in deposit of the amount of Rs.25,000/- per month from the month of October-2016 to January-2017 and thereafter from March-2017 till the date. Thus, there are more than two consecutive defaults committed by the Respondents and, therefore, the Applicants are entitled to apply for vacating the interim relief, which was in the nature of granting stay to the execution of the possession order in respect of the suit flat.

4] Learned counsel for Respondent Nos.1 and 2 Mr.Memon submits that he has received instructions to appear in the matter and he will be filing the Vakalatnama, on the receipt of the same, within two-three days. He further submits that he has also received the Pay Order of the amount of Rs.1,35,000/- from the Respondents and he

will be depositing the same in the Court within two-three days after receipt of Vakalatnama. For deposit of the remaining amount of Rs.1,90,000/-, he is instructed to seek time of four weeks.

5] Learned counsel for the Applicants, however, strongly resists this prayer on the count that when already default is committed by the Respondents on more than one occasion in compliance of the order, this Court should not show any indulgence to the Respondents and the Applicants may be permitted to be put in possession of the suit flat, by vacating the interim relief.

6] Considering the specific order passed by this Court on 6th May, 2016, giving liberty to the present Applicants to apply for vacating the interim relief in case there are two defaults committed by the Respondents in deposit of the amount and in pursuance of which this application is filed and having regard to the fact that the Respondents have already committed more than two consecutive defaults, it follows that the Respondents are not entitled to remain in possession of the suit flat and therefore, the Applications are entitled to get the order of interim relief vacated.

7] However, as learned counsel for Respondent Nos.1 and 2 is already having the Pay Order of Rs.1,35,000/- with him which he is depositing within two-three days and he has also undertaken to deposit the remaining amount of Rs.1,90,000/- within four weeks, in the interest of justice, it would be proper if some conditional order is passed to the effect that if the Respondents fail to deposit the remaining amount within four weeks, the Applicants will be entitled to get the order of interim relief vacated automatically, thus entitling the Applicants to get the possession of the suit flat.

8] Accordingly, it is directed that the Respondents shall deposit the Pay Order of Rs.1,35,000/- on or before 19th January, 2018. On the request of learned counsel for Respondent Nos.1 and 2, it is clarified that, in case by 19th January, 2018, learned counsel for Respondent Nos.1 and 2, does not receive the signed Vakalatnama from the Respondents, the Registry to accept the pay order on the application of their counsel Mr.Memon.

9] The Respondents to deposit the balance amount of Rs.1,90,000/- within four weeks from today.

10] In case of any default committed by the Respondents in compliance of this order, the interim relief granted earlier will stand automatically vacated, thereby entitling the Applicants to get the possession of the suit flat.

11] At this stage, on the request of learned counsel for the Applicants, the statement of learned counsel for Respondent Nos.1 and 2 is recorded to the effect that no third party is indicted in the suit flat and the wife and children of the Respondent are residing therein and are in possession thereof.

12] The hearing of the Civil Revision Application is expedited and it is kept on 5th March, 2018 for “Final Hearing” at 3.00 p.m..

13] The Application stands disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]