

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12482 OF 2018

(Daryl Joseph Pereira and others Vs. The Bombay Diocesan Trust Association Pvt. Ltd. and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders	Court's or Judge's orders
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Mr. Samir A. Vaidya i/b. Mr. P. M. Sawant for Petitioners.
Mr. Robin Thomas for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 29TH OCTOBER, 2018

P.C.:

Not on Board. At the request of Mr. Vaidya, taken up in the production Board.

2. Heard Mr. Vaidya, learned Counsel for the petitioners and Mr. Thomas, learned Counsel for the respondent No.1.

3. This Petition takes exception to the orders dated 23.02.2018 and 17.09.2018 passed by the learned trial Judge. By order dated 23.02.2018, the learned trial Judge disposed of the obstructionist notice in the light of the observations made in that order. By order dated 17.09.2018, the learned trial Judge issued possession warrant of the suit premises and directed the Bailiff Mr.Ghandat to execute the same by breaking open lock of

the suit premises in case found locked.

4. Mr. Vaidya submits that petitioners are in possession and nobody else is in possession. They have neither created third party interest nor parted with possession and that they will hereafter neither create third party interest nor part with possession of the suit premises.

5. Mr. Vaidya submits that as the impugned order is appealable, he may be allowed to withdraw the Petition with liberty to the petitioners to file appeal. He submits that within two weeks from today, petitioners will file appeal and also take out application for interim relief.

6. In view thereof, on the motion made by Mr. Vaidya, Petition is allowed to be withdrawn with liberty as prayed for. Grant of liberty shall not be construed as an expression of merits either way. All contentions of the parties on merits are expressly kept open. Petitioners shall file appeal within two weeks from today. They shall also take out application for interim relief.

7. To enable the petitioners to obtain interim order, the warrant of possession shall not be executed for a period of 4 weeks from today subject to the petitioners neither creating third party interest nor parting with possession of the suit premises. Order accordingly.

(R. G. KETKAR, J.)