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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1090 OF 2019 IN
FIRST APPEAL NO.578 OF 2018 WITH
CIVIL APPLICATION NO.1731 OF 2018

Shamim Akhatar Sirajuddin & Ors. ...Applicants
vs.
Hafizur Rehman K.Shaikh & Anr. ...Respondents

Ms Geeta Shastri I/b S.P.Srivastav for the
Applicants
Mr. S.A.Mudbidri for the respondent No.1

CORAM : S.K.SHINDE, J.
DATE : AUGUST 13, 2019

P.C.:

1 Heard the learned counsel for the applicants. The applicants are the appellants in First Appeal No.578 of 2018. These appellants were the defendant Nos.1, 3 and 4 in the suit No.7098 of 2003 wherein decree of possession has been passed against them by the Trial Judge at the instance of the respondent No.1 herein. Respondent No.3 (original defendant No.5) is the wife of respondent No.1.

2 This Court on 4th May 2018 stayed the operation of the Decree in First Appeal No.578 of 2018.

3 On 10th December 2018 this Court accorded three weeks' time by way of last chance to take steps to serve the unserved respondents.

4 On 14th February 2019 this Court declined to extend the ad-interim order on account of not taking steps to serve the unserved respondents as directed by this Court on 10th December 2018.

5 Ms Shastri, learned counsel for the applicants submits that well before 14th February 2019, the appellants had filed Civil Application on 17th December 2018 to serve the respondent No.3 on the fresh address. Ms Shastri further submits that this fact was not brought to the notice of this Court. She further submits that an attempt was made to serve the respondent No.3 on the new address. However, the Bailiff could not serve the respondent No.3 for some reason. Ms Shastri also submits that the appellants have applied to serve respondent No.3 by substituted mode of service.

6 Ms Mudbidri the learned counsel for the respondent vehemently opposed this application and submits that the submissions made by Ms Shastri were considered by this Court on 14th February 2019 while declining to extend ad-interim relief.

7 Thus, upon consideration of the facts of the case that since application was filed by the appellants on 7th December 2018 seeking leave to serve respondent No.3 at new address, it cannot be said that the appellants had not taken steps to serve the unserved respondent.

8 Thus, for the reasons stated above, the order dated 14th February 2019 is recalled.

9 Ms Mudbidri, learned counsel for the respondent submits that the suit property has been demolished by the Municipal Corporation of Greater Bombay and as of today, suit property does not exist. She further submits that alternate accommodation has been offered by the Municipal Corporation.

10 In view of the peculiar facts of the case, the appellants are at liberty to file appropriate proceedings in First Appeal No.578 of 2018 for protecting their interests in the suit property.

11 Civil Application is allowed in the aforesaid terms and disposed of.

(S.K.SHINDE,J.)