

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4266 OF 2019

Vijay Lakshminarayan Shukla

...Petitioner

Versus

M/s. Ish Homes Pvt. Ltd.
and others

...Respondents

....

Mr. Tanvir Abdul Hamid Shaikh, Advocate for the Petitioner.

Mr. Mayur Khandeparkar, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 05th APRIL, 2019

P.C.

1. Not on board. At the request of Mr. Shaikh taken up for admission.
2. Heard M.Tanvir Shaikh, learned counsel for the petitioner and Mr.Mayur Khandeparkar, learned counsel for the respondents, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.2', has challenged the order dated 29.3.2019 passed by the learned Judge, Court Room No.25 of the Court of Small Causes at Mumbai in Marji Application No.146/2019. By that order, the learned trial Judge rejected the application made by defendant No.2 under Section 144 of Code of Civil Procedure, 1908 (for short,'C.P.C.').

4. Section 2(2) of C.P.C. defines the expression 'decree' and it lays down that the expression 'decree' shall be deemed to include the rejection of a plaint and **the determination of any question within Section 144 of C.P.C..** Thus, the petitioner has an equally efficacious alternate statutory remedy of filing an appeal against the impugned order.

5. In view thereof, Mr. Shaikh seeks permission to withdraw this Petition with liberty to file an appeal challenging the impugned order along with application for interim relief.

6. On instructions from the petitioner Mr.Vijay L. Shukla, who is present in the Court today, Mr.Shaikh assures that within two weeks from today the petitioner will file appeal challenging the impugned order and also file application for interim relief. He further assures that within two weeks from today, the petitioner will remove all the articles lying in the suit premises. He submits that the interim order restraining the plaintiff from creating third party interest and/or parting with the possession of the suit premises may be continued for a period of four weeks from today.

7. On instructions, Mr.Khandeparkar states that the respondents / plaintiffs will extend full cooperation for removal of the articles. He further states that for a period of four weeks from today the plaintiffs will not create third party interest nor part with the possession of the suit premises.

8. Statements made by the learned counsel, on instructions, are recorded.

9. In view thereof, on the motion made by Mr. Shaikh, the petition is allowed to be withdrawn with liberty as prayed for and is disposed of as such. The petitioner shall file appeal challenging the impugned order along with application for interim relief within two weeks from today. Within two weeks from today, the petitioner will also remove all the articles lying in the suit premises. The petitioner shall press for interim order from the Appellate Court. So as to enable him to press interim order, the statement made by Mr. Khandeparkar to continue for a period of four weeks from today. It is made clear that this Court has not expressed any opinion as regards the merits of the interim application. Recording of statement made by Mr. Khandeparkar shall also not be construed as an expression of opinion on the merits of the matter either way. All contentions of the parties in that regard are expressly kept open. If the appeal is filed within two weeks from today, the Appellate Court will dispose of the appeal within three months from the date of filing of the appeal.

10. All concerned parties to act upon an authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)