

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
REVIEW PETITION [STAMP] NO.11814 OF 2019
IN
WRIT PETITION NO.2263 OF 2018

Vimalchand Ghevarchand Jain and others.]	Review Petitioners
Vs.	
Rajesh Vasant Tiwari and others.]	Respondents

.....

Mr. Vimalchand Ghevarchand Jain, Petitioner No.1 in person.

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CORAM : R.G. KETKAR, J.

DATE : 22ND APRIL, 2019.

P.C.

Not on board. At the request of Mr. Vimalchand Jain, petitioner No.1, taken up in the production board.

2. Heard Mr. Vimalchand Jain, petitioner No.1 in person at length.

3. By this Petition under section 114 r/w Order-XLVII, Rule-1 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the petitioners have sought review of the order dated 15th February, 2019 passed by this Court in Writ Petition No.2263 of 2018. Writ Petition No.2263 of 2018 was instituted by Rajesh Vasant Tiwari and others challenging the order dated 21st December, 2017 passed by the learned District Judge-2, Niphad below Exhibit 5 in Regular Civil Appeal No.125/2017 and other companion appeals. By that order, the learned District Judge rejected applications at Exhibit 5 of all the appeals and refused to stay eviction decrees. The learned District Judge

directed disposal of execution proceedings in Special Darkhast No.2 of 2015 expeditiously.

4. By order dated 15th February, 2019, the Petition instituted by the judgment debtors challenging the refusal of stay was disposed of as 'not pressed' in the following terms:

- i. In case, the respondents execute the decree and obtain possession, they shall neither create third party interest nor part with the possession and will abide by the outcome of the pending appeals, subject to their right to challenge the order.
- ii. The parties agree that they will appear before the learned District Judge on 25.2.2019 and for that purpose no fresh notice be issued to them. The learned District Judge will ensure that the appeals are ready for final hearing and fix a suitable date. The learned District Judge is requested to dispose of the appeals within three months from fixing the suitable date of hearing.
- iii. All contentions of the parties in the appeals are expressly kept open. Order accordingly.

5. The petitioners have sought review of this order. Order-XLVII, Rule-1 of C.P.C lays down that any person considering himself aggrieved by order may file review. In the present case, the Petition instituted by the respondents was disposed of as 'not pressed'. In other words, the prayer made by the respondents for staying decrees passed by the trial Court was not acceded to. In short, the Petition was decided in favour of the petitioners herein.

6. In view thereof, the petitioners cannot claim that they are aggrieved by the order dated 15th February, 2019 passed by this Court. In fact, the order impugned in the Petition refusing to stay was upheld by this Court. Once, stay to the eviction decrees is refused, the petitioners can execute the decrees.

7. Mr. Jain has relied on the following orders;

[1] Usha Sinha Vs. Dina Ram, (2008) 7 SCC 144 and in particular paragraphs 16 to 20 thereof.

[2] Vimalchand Ghevarchand Jain Vs. Farooq Fakruddin Motiwala, Review Petition [STAMP] No.29552 of 2018 and in particular paragraph 16 thereof.

A perusal of paragraphs 16 to 20 of the decision of **Usha Sinha** (supra) shows that the Apex Court was dealing with section 52 of the Transfer of Property Act, 1882 as regards *doctrine of lis pendence*. A perusal of the order dated 1st November, 2018 passed by this Court in Review Petition [STAMP] No.29552 of 2019 and in particular paragraph 16 shows that issue of *transferee pendete lite* was not brought to the notice of the Court which led this Court committing error on the face of the record. In short, none of the cases deal with maintainability of the Review Petition.

8. In view thereof, Review Petition is dismissed as not maintainable. Since petitioner No.1 is appearing in person, this Court has refrained from imposing exemplary costs for wasting Court's time. Order accordingly.

[R.G. KETKAR, J.]