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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.210 OF 2018

M/s.Avikansha Jewels & Anr. ...Appellants
vs.
Mr.Manish Pravinchand Shah ...Respondent

Sunita Bania for the Appellants
Mr.Ish Jain a/w Yash Agrawal I/b Kiran Jain &
Company for the respondent

CORAM : M.S.KARNIK, J.
DATE : JULY 15, 2019

P.C.:

1 Heard the learned counsel for the appellants and the learned counsel for the respondent. The order challenged in this Appeal from Order is dated 23rd November 2016 rejecting the Chamber Summons No.595 of 2015 in Summary Suit No.151 of 2015. The Chamber Summons No.595 of 2015 was taken up by the defendants for condonation of delay of 21 days in filing leave to defend. For the reasons mentioned in the order, the Chamber Summons came to be rejected. During the pendency of this Appeal, I am informed that the suit has been finally decided and there is a decree passed in favour of the plaintiff. I am further informed that the plaintiff has taken steps to execute the decree and execution proceedings are pending.

2 Now, the decree has been passed. The appellants

will have to take out appropriate proceedings for challenging the decree. In the course of challenge to the decree, the appellants are also entitled to challenge the order dated 23rd November 2016 impugned in this Appeal. The learned counsel for the appellants states that there is execution proceedings filed but as the defendant No.2 is not keeping well and he has serious health issues, this Court may grant some protection to the appellants till such time the proceedings are taken up by the appellants to challenge the decree as well as order impugned in this appeal. The learned counsel for the plaintiff fairly submits that he will not proceed with the execution for a period of four weeks from today. However, he makes it clear that he will stay his hands only for a period of four weeks on humanitarian ground and nothing further.

3 In view of the fact that the appellants will have to challenge the decree and the order impugned in this Appeal, present appeal is disposed of with liberty to the appellant to challenge the order impugned in this appeal in the course of proceedings which the appellants may take out for challenging the decree. For a period of four weeks from today, the decree already passed now to be stayed. Appeal from Order is disposed of. Civil Application does not survive and the same is also disposed of. All contentions kept open.

(M.S.KARNIK,J.)

