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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8317 OF 2019

Mukesh Milapchand Chabbria & Ors.] .. Petitioners

vs.

Mssrs.M.J. Enterprise] .. Respondent

Mr.Sheroo Kanuga for Petitioners.

None for Respondent.

CORAM : N.R.BORKAR, J.

DATE : 16TH FEBRUARY 2022

P.C.

1] This Petition takes an exception to the order dated 19.07.2019 passed by the 4th Joint Civil Judge, Senior Division, Kalyan, below Exhibit 14 in M.A. No.497 of 2018.

2] The Petitioners herein filed an application under Order XXXVII Rule 4 read with Section 151 of the Civil Procedure Code for setting aside the Judgment and Decree dated 31.07.2018 passed by the 5th Civil Judge, Senior Division, Kalyan, in Summary Civil Suit No.03/2017. An application at Exhibit 14 was filed inter alia praying that the execution of decree be stayed during the pendency of application under order XXXVII Rule 4. The trial Court rejected the said application by the order impugned.

3] I have heard the learned counsel for the Petitioners. None for the respondent. On the last date also there was no appearance on behalf of the respondents.

4] This Court, on 1.08.2019 passed following order ;

“Heard learned counsel for the parties.

2. Only to consider the bonafides of the petitioners and as counsel for the petitioners would submit that within a period of 2 weeks from today a sum of Rs.5,00,000/ (Rupees Five Lakhs only) will be deposited in the trial Court, list the matter on 16/8/2019.

3. For a period of 2 weeks there will be an adinterim order in terms of prayer clauses (b) and (c).

4. It is made clear that if a sum of Rs.5,00,000/ is not deposited within a period of 2 weeks, the interim order will stand vacated. This is without prejudice to the rights and contentions of the respondents to contest the Petition on merits and to request for further deposit.

5. Stand over to 16/8/2019.”

5] The learned counsel for the Petitioners submits that the petitioners have deposited Rs.5 Lakhs in terms of the order dated 01.08.2019 and tendered on record Affidavit in support of the said statement. The Affidavit is taken on record and marked as x-for identification. The learned counsel for the Petitioners further submits that the trial Court has already heard M.A. No.497/2018 and reserved for Judgment.

6] Considering the above facts and circumstances following order is passed :

i] The interim order passed by this Court dated 01.08.2019 shall remain in operation till the decision of M.A. No.497 of 2018 filed by the petitioners under Order XXXVII Rule 4 of the CPC.

ii] Needless to mention that if application filed by the Petitioners is allowed and the decree is set aside, the trial Court shall refund the amount of Rs.5 Lakhs to the Petitioners.

iii] Writ Petition is disposed of in the abovesaid terms.

[N.R.BORKAR, J]