

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.167 OF 2019

WITH

INTERIM APPLICATION NO.948 OF 2020

IN

CRIMINAL WRIT PETITION NO.167 OF 2019

Neelam Hiralal Kukreja @ Maya

Gagandas Sadhwani And Anr.

.. Petitioners

v/s.

The State of Maharashtra And Ors.

.. Respondents

....

Mr. Mubin Solkar, a/w. Mr. Aamir Sopariwala, i/b. Zara S. Salati, for the Petitioners.

Mr. A.R. Patil, APP, for State.

Mr. Rajesh S. Datar, for Respondent No.4.

....

CORAM: R.G. AVACHAT, J.

DATE : 5 JANUARY 2023.

P.C:-

Heard.

2. It is submitted by the learned Advocate for the Petitioners that in view of the Apex Court judgment that when a civil suit is pending, proceedings under Section 145 of Cr.P.C. should not have been continued.

3. The challenge in this petition is to the order passed under Section 145 of Criminal Procedure Code. It is a dispute over possession of a residential flat. The parties are cousins. Admittedly, civil suit was filed by the Petitioner and others. The suit was dismissed. First Appeal No.73 of 2020 against the order of dismissal of the suit is pending before this Court. In the proceedings under Section 145 Cr.P.C., an order has been passed to put the Respondent into possession of the disputed flat. The said order has been stayed in this petition.

4. The Apex Court in the case of *Mohd. Abid & Ors. vs. Ravi Naresh & Ors.*¹ has observed in para 4 as under:

“4. It is, however, an admitted fact that the petitioners have already filed a suit for injunction in which ex-parte ad-interim injunction has been granted by the Civil Court, Faizabad, Uttar Pradesh on 05.12.2020. Once the Civil Court is seized of the matter, it goes without saying that the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end. The inter-se rights of the parties regarding title or possession are eventually to be determined by the Civil Court.”

5. In view of the dicta of the Apex Court in the aforesaid case and the fact that an appeal is pending in this Court, the interim order passed in this petition is hereby made absolute.

¹ Petition(s) for Special Leave to Appeal (Crl.)No(s).5444/2022, Court No.22, Item No.14, Section II

6. The petition stands disposed of. The parties at at liberty to agitate their rights in the pending civil appeal or in any other proceeding they may prefer to file.

(R.G. AVACHAT, J.)