

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 17441 OF 2022
IN
WRIT PETITION NO.5113 OF 2001

Devishankar Ramkhalawan Mishra

... Petitioner

Versus

Chhotelal Bansi Prajapati and Anr.

... Respondents

— —
Mr.Asim Naphade with Mr.Yatin Shah for the Applicants-petitioner.
Mr.Akash Rebello with Mr.Mahesh Mishra for the Respondent No.1.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 31, 2023.

P. C. :

1. The interim application has been filed seeking recall of the order dated 5th September, 2019, which was dismissed for non-prosecution. The order dated 5th September, 2019 records that there was a statement by the counsel for the Petitioners that no instructions were received by him from the Petitioners.

2. Learned counsel appearing for the Respondent No.1 has filed an affidavit-in-reply pointing out that by order dated 23rd April,

2019, this Court had restrained the applicants-petitioners from creating any third party rights. He would further submit that it was found that third party by name Rajkumar Mishra was residing in the premises.

3. Learned counsel appearing for the Applicants submits that pursuant to the order of this Court, an additional affidavit has been filed by the said Rajkumar Ramlakhan Mishra, who has stated on oath that since he has not having any place of residence, he was staying in the suit premises for few days and thereafter, has now permanently shifted to his hometown in Uttar Pradesh.

4. Considered the averments made in the Interim Application. The writ petition was dismissed for non-prosecution, as no instructions were given to the counsel for the Petitioners. Learned counsel appearing for the Applicants-petitioners submits that due to miscommunication, no instructions could be given. The writ petition is of the year 2001 and pending for final hearing and is required to be decided on merits.

5. For the reasons stated in the Interim Application, the same is allowed and the order dated 5th September, 2019 is recalled and the writ petition is restored to its file. Considering that there was

interim relief which was running in favour of the Applicants-Petitioners-Applicants since 6th November, 2001, the interim relief granted is revived.

6. Needless to clarify that the interim relief restraining the applicants-petitioners from creating any third party rights in respect of the suit premises granted vide order dated 23rd April, 2019 is also revived.

7. Interim Application stands disposed of.

8. List the Writ Petition No.5113 of 2001 on **4th September, 2023 at 4:00 p.m.**, under the caption for final hearing. Interim relief, granted earlier, to continue till the next date.

(Sharmila U. Deshmukh, J.)