

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1619 OF 2024
IN
FIRST APPEAL NO.574 OF 2012

Mr. Krishnarao Mukund Chemburkar
Trustee of Shri Bhulingeshwar Dewalaya
Trust & Ors. : Applicants

IN THE MATTER BETWEEN

Mrs. Abhilasha Ajit Rawal : Appellant
Vs.

Mr. Krishnarao Mukund Chemburkar
Trustee of Shri Bhulingeshwar Dewalaya
Trust & Ors. : Respondents

Ms. Gauri Kishor Jadhav i/by Balkrishna Joshi, for the Appellant.
Sr. Adv. Mr. R. V. Govilkar a/w Shaba N. Khan, for the Applicants in IA.
Adv. Mr. Santosh Parad, for the Respondent/MCGM.

CORAM : KISHORE C. SANT, J.

DATE : 2nd APRIL, 2024

PC. :

1. This Application is moved for recall of order dated 8th November, 2023 passed in Interim Application No.1902 of 2023. The background for filing this Application is that initially the Applicant had filed Application bearing Civil Application (Stamp) No.24241 of 2018

praying for direction to the Appellant to deposit in the Court amount towards compensation for occupying the suit premises. There is already a decree passed against the Appellant directing Appellant to vacate the premises holding the Appellant to be trespasser. This Court in the First Appeal by way of interim protection granted stay to the decree. Since it was noticed that the prayer is Interim Application (Stamp) No.24241 of 2018 was not properly made the learned Counsel at that stage prayed for withdrawal of the Application with liberty to file separate Application seeking modification of the order. This Court was pleased to accept the request of the learned counsel. In view of that said Application was disposed of as withdrawn with liberty.

2. The Applicant thereafter filed an Application bearing Interim Application No.1902 of 2023. Under wrong impression that earlier Application (Stamp) No.24241 of 2018 was pending, leave was sought to withdraw the Application. In view of the statement of the learned Counsel, this Court allowed even that Application to be withdrawn. It is the case of the Applicant now that it was under wrong impression that earlier Application was pending this Application No.1902 of 2023 was withdrawn.

3. Learned Senior Counsel submits that the first Application was withdrawn with liberty from this Court on 9th October, 2019. It is clear

from the order dated 9th October, 2019 that the Applicant was entitled to make Application for the same relief. Interim Application No.1902 of 2023 was withdrawn under wrong impression, which has caused prejudice to the Applicant. If now Applicant is not allowed by recalling it will be against the spirit of leave and liberty granted by this Court by order dated 9th October, 2019 and prays for recall of order dated 8th November, 2023.

4. The Application is vehemently opposed by the Respondent by filing Affidavit-in-Reply. It is contended that the Application No.1902 of 2023 was withdrawn. No liberty was sought of this Court to file similar Applications.

5. This Court has considered this submission, the main objection of the Respondent appears that while withdrawing Application No.1902 of 2023 no liberty was sought to file fresh Application. By looking to the prayers in the present Application, it is seen that in fact this is not a fresh Application with similar prayer but is an Application for recall of order dated 8th November, 2023 in Interim Application No.1902 of 2023. Since the prayers are not considered on merits by this Court at any time it would be appropriate to allow the Applicant to agitate the prayer made in Interim Application No.1902 of 2023 by recalling the order dated 8th November, 2023. This Court finds that to take care of the interest of the Respondent ,

it is made clear that the Applicant will not be entitled to make his prayer with retrospective effect.

6. With this Application stands allowed.

7. Order dated 8th November, 2023 in Interim Application No.1902 of 2023 is hereby recalled.

8. The Application No.1902 of 2023 is restored its file without prejudice to rights of the parties.

9. With this Application stands disposed of.

10. The Interim Application No. 1902 of 2023 be placed on board dated 16th April, 2024.

(KISHORE C. SANT, J.)