

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 401 OF 2015
IN
FIRST APPEAL NO. 1018 OF 2014**

M/s. Rehab Housing Pvt. Ltd. ... Applicant
V/s.
Shri. Hiranman Shrawan Daki & Ors. ... Respondents

Mr. Salik Khan for the applicant.
Mr. Bhushan Walimbe for the Appellant.
Mr. Abhijeet Gosavi for respondent nos. 2 to 4.

**CORAM : K. K. TATED, J.
DATED : 03/07/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 Though the matter was adjourned time to time, by giving liberty to the appellant to file their affidavit-in-reply on record, but the same was not filed.

3 This application is preferred by the plaintiff to restrain the appellant and respondent nos. 2 to 4 from creating third party rights, title and interest in respect of suit property i.e. Survey No. 12, (New Survey No.17) Hissa No. 3 area admeasuring 67 Guntas situated at Mouje, Bori Budruk, Taluka Uran, District Raigad.

4 The learned Counsel for the applicant submits that the Trial Court by decree dated 16.01.2013 decreed the applicant's suit for

Specific Performance of Agreement directing the defendants to execute the Sale Deed in favour of the applicant. He submits that the defendants preferred the present First Appeal.

5 In this appeal, the Appellant defendant preferred application for stay. That application was allowed by this Court (Coram : Mrs.Mridula Bhatkar, J) on 12.12.2014. The learned Counsel for the applicant submits that if the defendants during the pendency of First Appeal creates the third party rights, title and interest in respect of suit property, nothing will survives in the present proceeding. He submits that in the interest of justice, this Hon'ble Court be pleased to restrain the defendants from creating any third party rights, title and interest in respect of suit property. He submits that as on today the defendants are in possession of the suit property.

6 On the other hand, the learned Counsel Mr. Walimbe appearing on behalf of the appellant defendants vehemently opposed the present Civil Application. He submits that this Hon'ble Court after hearing both the sides passed order dated 12.12.2014 and stayed the decree passed by the Trial Court. Not only that, this Hon'ble Court by order dated 12.12.2014 directed appellant to deposit sum of Rs.3,00,000/- in the Trial Court. He submits that if injunction is granted against the defendants from creating any third party rights, title and interest in respect of suit property, irreparable loss and injury will be caused to them. Not only that the earlier order dated 12.12.2014 was passed after hearing both the sides. Hence, there is no question of entertaining the present Civil Application. He further submits that the

present Civil Application in the form of review of the earlier order. Hence, it is not maintainable.

7 I heard both the sides at length. It is to be noted that in the present proceeding the suit filed by the applicant plaintiff for specific performance of agreement was decreed by the Trial Court. The same was carried before this Court by the defendants. If during the pendency of the First Appeal, defendants create third party right title and interest in respect of suit property, that will affect the plaintiff's interest in the present proceeding. In any case, the defendants are in possession of the suit property.

8 Considering the above mentioned facts, I am of the opinion that applicant has made out case for allowing this Civil Application.

9 Hence, Civil Application is allowed in terms of prayer clause (a), which reads thus:

“a) During the pendency of the above referred Appeal, be pleased to restrain the Appellant and Respondent Nos. 2 to 4 from creating any third party interest in respect of the suit property and parting with possession and/or creating any encumbrance on the suit property during pendency of the above referred appeal.”

10 Civil Application stands disposed of accordingly.

(K.K.TATED, J.)