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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 629 OF 2015
WITH
CIVIL APPLICATION NO. 777 OF 2015

Kirit Muraj Shah

.. Appellant

Vs.

Milan Laxmidas Samani and another

.. Respondents

Mr.Anilkumar K.Patil, Advocate for the Appellant.

Mr.Anil R.Mishra, Advocate for the Respondents.

CORAM : R. G. KETKAR, J.

DATE : 06th MAY, 2015

P.C. :

. Not on board. At the request of Mr.Anilkumar K.Patil, taken up in the Production Board.

2. As the Regular Court presiding over by Hon'ble Mr.Justice K.K.Tated is not available, matter is produced before me as per the administrative order passed by the Hon'ble Chief Justice.

3. Heard Mr.Anilkumar K.Patil, learned Counsel for the appellant and Mr.Anil R.Mishra, learned Counsel for the respondents.

4. By this appeal, original defendant has challenged the judgment and order dated 24/03/2015 passed by the learned Judge, City Civil Court for Gr.Mumbai, Borivali Division, Dindoshi, Goregaon, Mumbai in Notice of Motion No. 542 of 2013 in S.C.Suit

No. 649 of 2013. By that order, the learned trial Judge made absolute Motion in terms of prayer clauses (a) & (b). Mr.Patil submitted that respondents No. 1 & 2 instituted suit under section 6 of the Specific Relief Act, 1963 (for short 'Act'). During the pendency of the suit, they took out Notice of Motion No. 542 of 2013 praying interalia following reliefs.

(a) That pending the hearing and final disposal of the suit the Court Receiver High Court Bombay be appoint as receiver with full Power under Order 40 of C.P.C. with direction to take the forcible possession of suit premises and to hand over the suit premises to plaintiffs.

(b) That pending the hearing and final disposal of the suit that the Defendant his servants, agents, person/s claiming through him be restrained by an order and injunction of this Hon'ble court from dealing with disposing off, alienating with, encumbering and/or creating any kind of third party right in respect of suit premises.

5. By the impugned order, the learned trial Judge has made absolute Motion in terms of prayer clauses (a) & (b). He submitted that the Court Receiver has fixed appointment tomorrow morning at about 10.00 a.m.. He, therefore, got the papers produced for urgent relief.

6. Mr.Mishra submitted that in view of section 6(3) of the Act Appeal is not maintainable. He further submitted that after order was passed on 24/03/2015, appellant filed application Exhibit 7 for stay of the impugned order. By order dated 25/03/2015, the learned trial Judge rejected the application. He, therefore, submitted that no interim protection can be given to the appellant.

Section 6(3) of the Act reads as under :

“No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.”

7. It is not in dispute that respondents No.1 & 2 instituted suit under section 6 of the Act. By the impugned order, the learned trial Judge has made absolute Motion in terms of prayer clauses (a) & (b). In view of section 6(3) of the Act, no appeal lies from any order or decree passed in any suit instituted under section 6.

8. In view thereof, appeal is incompetent. Hence, Appeal is dismissed as not maintainable and is accordingly dismissed.

9. In view of dismissal of the Appeal, Civil Application No.777 of 2015 for stay does not survive and the same is disposed of accordingly.

10. It is expressly made clear that I have not examined merits of the case. All the contentions of the parties on merits are expressly kept open. Office is directed to return the certified copies of the impugned order.

(R. G. KETKAR, J.)