

FARAD CONTINUATION SHEET  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
CIVIL APPELLATE SIDE JURISDICTION.

APPEAL FROM ORDER NO.583/2014

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| Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr. Rajan S. Pawar for the Appellant

**CORAM : K. K. TATED, J.**

**DATE : JULY 7, 2015**

**P.C.:**

1. Heard. This appeal is preferred by Defendant Nos.4 and 5 challenging the order dated 07/03/2014 passed by the 3<sup>rd</sup> Jt. Civil Judge, Senior Division Kalyan below Exhibit 5 in Special Civil Suit No. 342/2013 restraining the Appellant - Defendant Nos.4 and 5 from creating any third party right, title and interest in respect of the suit property i.e. Flat No.402, 4<sup>th</sup> Floor, Sindri Sagar Apartment, situated opposite Golden Tower, Ulhasnagar-3, Dist. Thane.

2. In the present proceedings, the Plaintiff filed Special Civil Suit No.342/2013 for specific performance agreement dated 29/05/2013 registered under Sr.No.1689/2013 with Sub Registrar, Ulhasnagar. The Plaintiff, in plaint

paragraph 27, stated that total price of the suit flat was decided to Rs.59 lacs, out of which he paid Rs.29 lacs and kept ready remaining amount of Rs.30 lacs by DD. In spite of that the Defendant failed and neglected to execute the sale deed in his favour. Hence, the Plaintiff preferred Application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for injunction restraining the Defendant from creating any third party right, title and interest in respect of the suit flat during pendency of the suit. The Trial Court, considering the pleadings on record passed impugned order dated 07/03/2014.

3. The learned counsel for the Appellant Defendant Nos.4 and 5 submits that the Trial Court erred in coming to the conclusion that the Plaintiff was entitled to relief under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908. He submits that as on today, Defendant Nos.4 and 5 are in possession of the suit flat. By the impugned order, both the Defendants are restrained from creating any third party right, title and interest in respect of the suit property, which is against the justice, equity and good conscience and same is liable to be quashed and set aside.

4. In the present proceedings, out of Rs.59 lacs, the Plaintiff paid Rs.29 lacs to the Defendant. Moreover, he kept ready a DD of Rs. 30 lacs towards the balance consideration of the suit flat. If Defendant Nos.4 and 5 allowed to create any third party right, title and interest in respect of the suit flat during pendency of the Special Civil Suit No. 342/2013 that will affect the interest of the Plaintiff.

5. Considering these facts, I do not find any reason to interfere with the well reasoned order dated 07/03/2014 passed by the Trial Court. Hence, the Appeal from Order stands rejected.

**JUDGE**