

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2101 OF 2014
IN
FIRST APPEAL NO. 698 OF 2014**

Mrs. Preeti Mohan alias Bitty Dogra alias Preeti Harish Mansukhani	...Applicant
<i>Versus</i>	
Dr. Ranbir Singh & Ors.	...Respondents

Mr. Aditya Pratap for the Applicant.
Ms. Rajkumari C. Nichani for the Respondents.

**CORAM: A. S. OKA & G.S. PATEL, JJ.
DATED: 15th December 2015**

PC:-

1. Heard the learned counsel appearing for the Applicant and the learned counsel appearing for the Respondents. The Applicant is the Appellant/2nd Defendant. The First Appeal preferred by the Applicant challenging the decree of specific performance of Agreement for Sale of the suit flat has been admitted and there is an ad-interim stay granted. The learned counsel for the Respondents pointed out that before transfer of the Suit to the City Civil Court, an interim order in the Suit was passed by a Division Bench of this Court by order dated 12th December 1995 in Appeal No. 918 of

1995 of appointing a Receiver in respect of the Suit flat who was directed to take only symbolic possession of the Suit flat and appoint the Defendants in the Suit as agents of the Receiver without security and royalty, subject to other conditions provided in the said order, including the condition of the Defendants giving an undertaking. We must note here that the present Applicant/Appellant is the 2nd Defendant in the original Suit. In the Memorandum of Appeal of the First Appeal, it is disclosed that the 1st Defendant has expired on 4th January 2004.

2. As the First Appeal has been admitted, the Applicant cannot be dispossessed. However, ad-interim stay will have to be continued, subject to modification that the interim arrangement provided under the order dated 12th December 1995 in Appeal No. 918 of 1995 will continue. The relevant part of the said order reads thus:

"The Receiver shall take only symbolic possession and appoint the appellants as the agents of the Receiver without security and royalty. The Receiver will not display his board on the suit premises, provided the appellants file a written undertaking within one week that the suit premises shall be used personally by the appellants and possession thereof shall not be transferred in favour of any other person in any manner whatsoever."

3. The learned counsel for the original Plaintiffs submitted that the original Plaintiffs have applied to the Trial Court for orders as to speaking to the minutes as regards the observations made in

paragraph 47 of the impugned Judgment. She submits that in view of the order of ad-interim stay, the learned Trial Judge has declined to hear the prayer made for speaking to the minutes. The learned counsel appearing for the Applicant has objection to the prayer made by way of speaking to the minutes. However, it is for the Trial Court to consider the said objection. The pendency of this Appeal cannot prevent the Trial Court from deciding the prayer made for speaking to the minutes as the said prayer can be considered only by the Trial Court. Hence, we dispose of this application by passing following order:

- (a) there will be an interim stay of execution of operation of the impugned Judgment decree, subject to clarification that the aforesaid order dated 12th December 1995 appointing the Receiver of the Suit flat shall continue to operate till the disposal of the Appeal. Hence, the Court Receiver, High Court, Mumbai shall be the Receiver of the suit flat pending the Appeal;
- (b) As the original 1st Defendant is no more, now the present Applicant (the 2nd Defendant) shall be the agent of the Court Receiver in terms of the order dated 12th December 1995. A fresh undertaking shall be filed by the present Applicant in terms of the order dated 12th December 1995 within a period of four weeks from today;

- (c) A fresh Agency Agreement shall also be executed by the present Applicant within a period of four weeks from today;
- (d) We clarify that the pendency of the Appeal and grant of interim relief will not prevent the Trial Court from deciding the prayer made by the Respondents for speaking to the minutes. The Trial Court shall proceed to decide the said prayer in accordance with law after giving an opportunity to the Applicant of being heard. All contentions of the parties as regards the said prayer are kept open;
- (e) The Civil Application is disposed of on the above terms.
- (f) Hearing of the Appeal is expedited.

(G. S. PATEL, J.)

(A. S. OKA, J.)