

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

**APPEAL FROM ORDER NO.605 OF 2014
WITH
CIVIL APPLICATION NO.730 OF 2014**

Smt.Hamida wd/o. Abdul Qayyum Shaikh .. Appellant

Vs.

Mr.Mohd. Akram Mohd. Isa .. Respondent

Mr.A.S.Malvankar for the appellant

Mr.Ram Singh for the respondent

**CORAM : K.K.TATED, J.
DATED : 23/06/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This Appeal is preferred by plaintiff challenging the order dated 5.5.2014 passed by Bombay City Civil Court, Mumbai declining to grant ad-interim relief. Few facts of the matter are as under:
- 3 Initially the plaintiff filed S.C.Suit No.2138 of 2012 for an order of injunction restraining respondent defendant from obstructing the plaintiff's right to enter the suit premises i.e. Room No.A-608 1/1 (a), Isa Chawl, Colaba Plot, Squatters Colony, Jogeshwari (East), Mumbai 400 060. In that suit, the plaintiff preferred Notice of Motion No.2502

of 2012 for an order of injunction with following prayers

“(a) Pending the hearing and final disposal of the suit the Defendant his agents, any other persons acting on his behalf be restrained by an order of injunction thereby restraining the Defendant from obstructing the Plaintiffs from entering into the Room No.A-608 1/1 (a), Isa Chawl, Colaba Plot, Squatters Colony, Jogeshwari (East), Mumbai 400 060.

(b) Interim and ad-interim reliefs in terms of prayer clause (a) be granted.

(c) Cost of the Notice of Motion be provided for.

(d) Such other and further reliefs as the nature and circumstances of the case may require be granted.”

4 Later on plaintiff withdrew the said suit and subsequently filed the present Suit No.1003 of 2014 with following prayers

“(a) this Hon'ble court may be pleased to direct the Defendant to handover peaceful and vacant possession of the suit premises viz. Room No.KEM_A_608 1/1 (a) at Isa Chawl, Colaba Plot, Squatters colony, Jogeshwari (East), Mumbai – 400 060 to the plaintiff herein.

(b) the Defendant, his servants and agents be restrained by an order and permanent injunction of this Hon'ble Court from disposing of, alienating, inducing any third party into the suit premises and/or creating any third party right in respect of the suit premises viz. Room No.KEM/A/608 1/1 (A) at Isa Chawl, Colaba Plot, Squatters Colony, Jogeshwari (East), Mumbai – 400 060.

(c) that the Defendant be ordered to return the household articles lying in the suit premises, as per list annexed at Exhibit G.

(d) Pending the hearing and final disposal of the above suit this Hon'ble Court be pleased to appoint the Court Receiver High Court, Bombay at the Receiver of suit properties with all power under Order XL of Code of Civil Procedure, 1908 and to take formal possession of the suit premises and the plaintiff be appointed as agent of the suit premises on such terms and conditions as this Hon'ble Court may deem fit and proper.

(e) for interim and ad-interim relief in terms of prayer clause (a) and (b) above;

(f) Cost of the present suit be provided for;

(g) for such other and further reliefs as the nature and circumstances of the case may require.”

5 The learned counsel for the plaintiff submits that the respondent defendant carried out renovation of the suit premises. He submits that plaintiff has strong apprehension that defendant might sell the suit premises to some other party or create any third party right, title and interest. He submits that if defendant succeeds in creating third party right, title and interest in respect of the suit premises, nothing will survive in the present proceeding.

6 In support of this contention, Advocate for the plaintiff relies on paragraph 18 of the plaint. The learned counsel for the plaintiff submits that in the interest of Justice, this Hon'ble Court be pleased to restrain the respondent defendant from creating any third party right, title and interest in respect of the suit premises till the hearing and final disposal of the suit.

7 On the other hand, the learned counsel for the respondent defendant vehemently opposed the present Appeal from Order. He submits that plaintiff has not made out any case for ad-interim relief. Not only that the Notice of Motion preferred by plaintiff is pending for hearing and final disposal on its own merits. He submits that the Trial Court in impugned order dated 5.5.2014 specifically recorded that earlier plaintiff filed S.C.Suit No.2138 of 2012 for same cause of action and hence, there is no question of any urgency in the present matter.

8 I have heard both the sides at length. It is to be noted that earlier plaintiff filed S.C.Suit No.2138 of 2012 in respect of the same suit property. Later on, plaintiff withdrew that suit and filed the present suit. The Trial Court in order dated 5.5.2014 specifically recorded that in view of the previous litigation between the parties there is no question of any urgency. In earlier suit, plaintiff has not made any prayer for injunction restraining the defendant from creating any third party right, title and interest in respect of the suit premises.

9 Considering the prayers in the earlier suit and the order passed by Trial Court, I do not find any substance in the present Appeal from Order. Hence, following order:

- (i) Appeal from Order stands dismissed.
- (ii) Hearing of Notice of Motion No.1173 of 2014 is expedited.
- (iii) No order as to costs.
- (iv) In view thereof, Civil Application does not survive. The same is also dismissed as infructuous.

(K.K.TATED, J.)