

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST) NO. 30931 OF 2015****ALONGWITH****CIVIL APPLICATION (ST) NO. 30933 OF 2015****IN****APPEAL FROM ORDER (ST) NO. 30931 OF 2015****Vishal Shriram Deshpande & Anr.****..... Appellants****VERSUS****Dharmendra Omprakash Gupta****..... Respondent**

Mr.Suresh Gole, i/b. Mr.Inderjeet Yadav for the Appellants.

Mr.Diwakar Dwivedi for the Respondent.

**CORAM : R.D. DHANUKA, J.****DATED : 30<sup>th</sup> NOVEMBER, 2015****P.C.**

By this appeal from order, the appellant has impugned the order passed by the learned trial judge dismissing the notice of motion filed by the appellant (original plaintiff) filed in a suit for a declaration that the defendant has no right to disturb joint possession of the plaintiffs or any part thereof and for injunction from disturbing the alleged use, occupation, possession of the plaintiffs with the defendant in respect of the suit premises.

2. It is the case of the appellants that on 3<sup>rd</sup> July, 2007 the appellants had entered into an agreement with the respondent. Under the said writing, the appellants had given financial help of Rs.50,000/- to the respondent and in lieu of the said financial help, the respondent who was likely to be allotted the premises by the builder under SRA scheme in place of room premises which would be in joint possession of the appellants and the respondent.

3. Mr.Gole, learned counsel for the appellants invited my attention to the ad-

interim order passed by the trial court in favour of the appellants and submits that the respondent had though disputed the existence of the agreement has not disputed the signature on the agreement. He submits that the final order passed by the learned trial judge could not be contrary to the ad-interim order passed by the learned trial judge granting ad-interim injunction.

4. Learned counsel appearing for the respondent on the other hand invited my attention to the written statement filed by the respondent and also to a police complaint alleging the threat given by the appellants to the respondent. He submits that the signature of the respondent was obtained by the appellant on a stamp paper without explaining the contents thereof forcibly. He submits that the stamp paper was also in the name of one Mr.A.K.Singh who is not known to the respondent. He submits that admittedly the respondent was allottee of the permanent alternate accommodation under thte SRA scheme and has been in possession of the said property admeasuring about 225 sq.ft. He submits that under the terms of the said allotment of the said room, the said room cannot be transferred for a period of 10 years and thus there is no question of entering into any such alleged writing with the appellants. He submits that the respondent has disputed the existence of the alleged writing though the appellant has signed on the stamp paper.

5. Insofar as ad-interim order granted by the trial court in favour of the appellant is concerned, he submits that when the said ad-interim order was passed, there was no affidavit in reply filed by the respondent. He submits that after considering the documents filed by both the parties, the learned trial judge has rightly rendered a prima facie finding that the said alleged writing relied upon by the appellant is seriously disputed. The respondent being allottee of the permanent

alternate accommodation is entitled to occupy the said premises exclusively.

6. A perusal of the alleged writing relied upon by the appellants clearly indicates that the same was not interpreted to the respondent who is not familiar with the English. The said alleged writing further indicates that even according to the appellant, the financial help was given to the respondent in the sum of Rs.50,000/-. Under the SRA scheme, such permanent alternate accommodation cannot be disposed of or parted with possession in respect of any party. In my prima facie view, whether such alleged writing which is disputed by the respondent is enforceable in law itself is an issue which has to be decided by the trial court. The respondent had already filed the police complaint against the appellant alleging threats and in obtaining his signature on a writing.

7. The appellant has not disputed that the said premises are allotted to the respondent by the builder under the SRA scheme exclusively.

8. Insofar as submission of the learned counsel for the appellants that the final order passed by the learned trial judge cannot be contrary to the ad-interim order passed by the learned trial judge is concerned, in my view there is no merit in this submission of the learned counsel. When the ad-interim order passed by the learned trial judge, no affidavit in reply was filed by the respondent. Be that as it may, the ad-interim order is now merged with the final order which is passed after considering the submissions and the documents produced by both the parties. In my view there is no merit in this appeal. Appeal from order is devoid of merits and is accordingly dismissed. No order as to costs. In view of the dismissal of the appeal from order, civil application does not survive and is accordingly dismissed.

**[R.D. DHANUKA, J.]**