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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.35175 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.35177 OF 2015

Iqbal Singh Matharu	...Appellant
V/s.	
Rashida A. Presswala & Anr.	...Respondents

Mr.Rajeev Chavan, Senior Counsel i/b Mr.Mandar Limaye for the Appellant.

Mr.R.A. Shah i/b Mr.Mansukhlal Hiralal for the Respondents.

Mr.M.S. Karnik for the Intervenor.

CORAM : R.D. DHANUKA, J.
DATE : 23RD DECEMBER, 2015.

P.C. :-

1. By this appeal from order the appellant has impugned part of the directions issued by the learned trial Judge while allowing Notice of Motion No.4123 of 2015 i.e. the directions issued by the learned trial Judge to the Court Receiver to monitor the work of the building wherein the suit flat is situated.

2. Mr.Chavan, learned senior counsel for the appellant submits that the learned trial Judge has already granted six months time to the appellant to complete the work of the building and has already appointed the Court Receiver in respect of flat no.701. He

submits that since the respondents are not concerned with the construction of the entire building, the learned trial Judge could not have directed the Court Receiver to monitor the work of the entire building wherein the suit flat is situated. He submits that the appellant would not create any third party rights in respect of the suit flat. In view of the undertaking rendered by the appellant before the Criminal Court, the appellant is bound to comply with the said undertaking. It is submitted that if the Court Receiver is directed to monitor the work of the entire building, the on going work of the appellant would be seriously hampered and it would prejudice not only the appellant but also the other flat buyers.

3. Mr.Shah, learned counsel for the respondents submits that in view of several breaches committed by the appellant of their obligation to carry out the construction of the structure of the suit building, the order passed by the learned trial Judge directing the Court Receiver to monitor the work of the building is justified. He submits that the directions was necessitated in view of the breaches committed by the appellant. He submits that no prejudice would be caused to the appellant if the Court Receiver is directed to monitor the work of the building wherein the suit flat is situated.

4. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the appellant has already been

directed to complete the work of the entire building within six months from the date of the said order. The learned trial Judge has also appointed the Court Receiver in respect of flat no.701, who will receive possession of the said flat from the appellant. The Court Receiver has been directed to hand over possession of the suit flat in favour of the original plaintiffs after completion of the construction work of the building with its amenities. The appellant has already made submission before this Court that the appellant would not create any third party rights in respect of suit flat, which statement is accepted by this Court.

5. In my view the respondents (original plaintiffs) cannot seek an order and direction against the Court Receiver to monitor the work of the entire building. In my view, if this direction of the learned trial Judge is not set aside, it would affect the on going construction of the building and other flat buyers. In my view, the learned trial Judge has exceeded his jurisdiction by issuing such directions to the Court Receiver to monitor the work of the entire building. The respondents herein have been fully protected by the other directions issued by the learned trial Judge in the impugned order and in addition to that in view of the statement made by the appellant before this Court that no third party rights would be created in respect of the suit flat.

6. The impugned direction in clause (d) of the impugned

order directing the Court Receiver to monitor the work of the entire building is accordingly set aside. Rest of the order passed by the learned trial Judge is upheld.

7. The appeal from order is accordingly disposed of in aforesaid terms.

8. In view of the disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)