

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

**APPEAL FROM ORDER NO.592 OF 2016
ALONGWITH
CIVIL APPLICATION NO.762 OF 2016**

Mr. Vishal S. Nagaria

.. Appellant/Applicant

Versus

Mr. Uttam T. Jain

.. Respondent

Mr. Naresh Ratnani a/w Akhileshwar Sharma i/by Ashwin Ankhad & Associates for the Appellant/Applicant.

Mr. Ranjeev Carvalho a/w Mr. Anand Chovatia for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 8th JULY 2016

PC.

1. The order dated 05.11.2015 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, partly allowing Notice of Motion No.751 of 2015 filed by the Appellant/original Plaintiff is taken exception to by way of the above Appeal from Order. The Appellant has filed the suit in question being SC Suit No.647 of 2015 for the relief of specific performance in respect of the agreement dated 12.09.2013 which is in respect of the sale of Flat No.602 in one Jyoti Arch Building, Kandivali (W), Mumbai. In the said suit, the Plaintiff filed the instant

Notice of Motion inter-alia for two reliefs i.e. restraining the Defendant from creating third party rights and for appointment of Court Receiver under Order 40 of the CPC. As indicated above, the said Notice of Motion has been partly allowed. Whilst the relief of appointment of Court Receiver has been rejected. The relief restraining the Defendant from creating third party rights has been granted, this was in view of the fact that a statement came to be made on behalf of the Defendant on 06.04.2015 that no third party rights would be created in respect of the suit property.

2. In so far as the appointment of Court Receiver is concerned, the Trial Court having regard to the fact that there is no material to indicate that the Plaintiff was put in possession as also having regard to the fact that the suit flat might have been mortgaged to the Mogaveera Bank Ltd. did not deem it appropriate to grant the said relief of appointment of the Court Receiver. The Trial Court has also adverted to the fact that there is no material on record to show that the suit property is in danger of being wasted, alienated etc. In so far as the suit flat being mortgaged is concerned, the Learned Counsel Mr. Ranjeev Carvalho appearing on behalf of the Respondent/original Defendant on instructions makes a statement that suit flat in fact has been mortgaged to the Mogaveera Bank.

3. In my view, therefore, the reasons attributed by the Trial Court for rejecting the application in so far as appointment of the Court Receiver is concerned are unexceptional and therefore do not merit any interference in the Appellate Jurisdiction of this Court. The Appeal from Order is accordingly dismissed.

4. However, having regard to the nature of the dispute involved, the hearing of the suit is expedited.

5. In view of the dismissal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]