

Sequeira

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

APPEAL FROM ORDER NO. 696 OF 2015

Along with

CIVIL APPLICATION NO. 851 OF 2015

Mr.Kiran Gulhane

... Appellant.

V/s.

Mr.Amavel Alvaro Fernandes & ors.

... Respondents.

Mr.Sushil Upadhyay i/b Mr.A.M.Sarogi, for the Appellant/Applicant.

None for Respondents.

***CORAM : N.M. Jamdar, J.
Friday 15 April, 2016.***

P.C. :-

The Appeal challenges the order passed by the City Civil Court on 13 September 2012 dismissing the Notice of motion taken out by the Appellant for stay of the Suit under Section 10 of the Code of Civil Procedure and also for dismissal of the Suit.

2. By the impugned order the learned City Civil Court Judge has rejected the Notice of Motion. The Respondent-Plaintiff filed S.C. Suit No.2610 of 2008 in this Court. The learned City Civil Court Judge, has rightly observed that the Suit in which the Notice of motion is taken out is prior to the Suit filed in the High Court and therefore, it cannot be stayed. The learned counsel for the Appellant submitted that having failed to obtain any interim order in the Suit before the City Civil Court thereafter the Respondent-Plaintiff has filed the Suit in the High Court

and has sought some relief. It is open to the Appellant to take such contention in the Suit filed in the High Court. As regards the dismissal of the Suit is concerned, merely because the other Suit is filed by the Respondent-Plaintiff in the High Court with similar prayers, the Suit pending before City Civil Court cannot be straightaway dismissed without looking into the other aspects of the matter. In the circumstances, the Appeal from Order cannot be entertained and is accordingly dismissed.

Civil Application also stands disposed of.

(N.M. Jamdar, J.)