

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST) NO. 4030 OF 2016****ALONGWITH****CIVIL APPLICATION (ST) NO. 4614 OF 2016****IN****APPEAL FROM ORDER (ST) NO. 4030 OF 2016****Trimet Trading Corporation****..... Appellant****VERSUS****M/s.Mohit Diamonds & Anr.****..... Respondents**

Mr.A.Daver, i/b. Delnaz Palkhivala for the Appellant.

Mr.Girish Kedia for Respondent No.1.

CORAM : R.D. DHANUKA, J.**DATED : 22nd FEBRUARY, 2016****P.C.**

Appeal from Order not on board. Taken on board.

2. Heard the learned counsel for the appellant and respondent no.1.
3. By this appeal from order, the appellant has impugned the order passed by the learned trial judge in the Notice of Motion No.1853 of 2012 refusing to recall the order passed by this court on 30th September, 2011 in Notice of Motion No. 3373 of 2011 when the suit was heard by this court.
4. Learned counsel appearing for the appellant invited my attention to some of the documents annexed to the plaint. It is submitted that the appellant was the original owner in respect of the office premises no. 407 which was described at Serial no.2 to the Schedule A to the Notice of Motion No.3373 of 2011.

5. My attention is also invited to the share certificate in respect of the said property and it is submitted that even the said share certificate would indicate that the said property was purchased by the appellant. He submits that the original defendant had no right, title or interest whatsoever in the said property.

6. It is submitted by the learned counsel for the appellant that though the said property belongs to the applicant, the learned trial judge has refused to modify the earlier order passed by this court granting injunction in respect of that property also.

7. A perusal of the record produced by the appellant before this court prima facie indicates that the said property described at serial no.2 of the Schedule A was purchased by the appellant. In my view the learned trial judge thus ought to have vacated the interim order insofar as property described at serial no.2 is concerned.

8. In my view interest of justice would be met with if the impugned order passed by the learned trial judge is partly modified. I, therefore, pass the following order :-

The order dated 30th September, 2011 passed by this court insofar as it was passed in respect of the office premises no.407, Prasad Chambers, Mama Parmamand Road, Swadeshi Mill Compound, Opera House, Mumbai 400 004 along with shares issued by the said society would not apply to the appellant. It is made clear that the rest of the order dated 30th September, 2011 and the order passed by the learned trial judge refusing to modify the said order stands unaffected. It is

made clear that this injunction would continue during the pendency of the suit and for a period of two weeks thereafter.

9. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeal from order, civil application for stay does not survive and is accordingly disposed of.

10. Learned trial judge is directed to proceed with the hearing of the summons for judgment as well as the suit.

11. It is made clear that the effect of their being a common director in the applicant company as well as the defendant company can be considered by the learned trial judge at the time of hearing of the suit.

[R.D. DHANUKA, J.]