

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

**APPEAL FROM ORDER NO.378 OF 2016
WITH
CIVIL APPLILCATION NO.492 OF 2016**

Vivek Dattatray Mhaskar : Appellant/Applicant.

Versus

Nimisha Nitin Mhaskar and ors. : Respondents.

Mr. V C Ghosalkar for the Appellant/Applicant.

Ms. Swati P Gautam for the Respondent Nos.1 and 2.

CORAM : R. M. SAVANT, J.

DATE : 27th June 2016

P.C.

1 The above Appeal from Order takes exception to the order dated 25/01/2016 passed by the learned Judge of the City Civil Court, Greater Bombay by which order the Notice of Motion No.3199 of 2015 filed by the Appellants-original Plaintiff came to be dismissed.

2 By the said Notice of Motion the Plaintiff had sought recall of the order dated 23/07/2014 to the extent of prayer clauses (d), (e) and (f) of the Notice of Motion No.1652 of 2010. In so far as the said Notice of Motion No.1652 of 2010 is concerned, the learned counsel for the Plaintiff had made a statement that the Plaintiff would only press prayer clause (a) of the said Notice of Motion and would not press prayer clauses (b), (c), (d), (e), (f) and (g). It is on the basis of the said statement that the said Notice of Motion came

to be disposed of by passing the following order :-

“ The Notice of Motion bearing No.1652 of 2010 is hereby made absolute in terms of prayer clause (a) of the relief claimed, the prayer clause (b), (c), (d), (e), (f) and (g) of notice of motion are hereby rejected as same are not pressed by the Plaintiff at this stage.”

A reading of the said order therefore discloses that the said prayers were not pressed at the said stage. The Plaintiff however, filed the instant Notice of Motion No.3199 of 2015 for recall of the said order in so far as the recording made therein that the prayer clauses (b), (c), (d), (e), (f) and (g) are rejected. The said relief was sought on the basis that the learned counsel for the Plaintiff had no authority to make the said statement.

3 The Trial Court has by the impugned order dated 25/01/2016 rejected the instant Notice of Motion filed for recall.

4 In my view, having regard to the recording made in clause (1) of the operative part of the said order dated 27/03/2014 it was always open for the Plaintiff to apply for the relief in terms of prayer clauses (b), (c), (d), (e), (f) and (g) at a later stage. However, the Trial Court it seems was swayed by the fact that the Plaintiff is seeking relief of recall of the said order on the basis

of calling in question the conduct of his counsel.

5 In my view, since the Trial Court has in its order dated 27/03/2014 has recorded that the Plaintiff does not press the said prayers at the said stage, the Plaintiff is entitled to file an application for the said reliefs, if the situation warrants. The learned counsel appearing for the Appellant/Plaintiff states that the Plaintiff would file an application i.e. Notice of Motion seeking the reliefs in terms of prayer clause (d) of the said Notice of Motion No.1652 of 2010. If any such Notice of Motion is filed, needless to state that the same would be tried on its own merits and in accordance with law. The contentions of the parties are kept open for being urged before the Trial Court. The learned counsel for the Respondent Nos.1; and 2 has no objection to the said course of action being followed. With the aforesaid directions, the above Appeal from Order is disposed of . In view of the disposal of the above Appeal from Order, Civil Application No.492 of 2016 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]