

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

**CIVIL APPLICATION NO. 1445 OF 2014
IN
FIRST APPEAL NO. 450 OF 2014**

P. A. Pillai ... Applicant
V/s.
Mrs. Raj Indrakumar Bhatia & Anr. ... Respondents

Mr. Naveen Parekh with Shaikh Parwaney i/b Hetal Patel for the Applicant.
Mr. P. J. Thorat for the respondent no.1.

**CORAM : K. K. TATED, J.
DATED : 23/02/2016**

P.C.:

. Heard learned Counsel for the parties.

2 This Application is preferred by Defendant No.2 for stay of operation and implementation of the Judgment and Decree dated 03.02.2014 passed by Bombay City Civil Court at Dindoshi, Borivali Division in S.C. Suit No. 1690 of 2003 by which Trial Court directed the applicant to handover vacant and peaceful possession of suit flat i.e. Flat No. B-5 to the plaintiff/Respondents and also declaration about the Agreement for Sale dated 15.01.1989, Deed of Confirmation dated 26.11.1999 and agreement between Defendant Nos. 1 and 2.

3 The learned Counsel for the applicant submits that as per Agreement dated 10.03.1989 between Defendant No.1 & 2, Azad Co-Operative Housing Society Ltd. allotted Flat No.5 on second floor in

Wing B at Malad (E), Mumbai – 400 097 to the applicant. He further submits that society handed over the possession of the suit flat by possession letter dated 16.10.2000. Since then, the applicant is in possession of the suit flat. He submits that during the course of the trial, his possession was protected by the Trial Court. He submits that pending the hearing and final disposal of the First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of impugned Judgment and Decree passed by the Trial Court. He submits that if stay is not granted, irreparable loss and injury will be caused to them.

4 On the other hand, the learned Counsel for the Respondent No.1 vehemently opposed the present Civil Application. He submits that as per Agreement dated 15.01.1989, the plaintiff's husband purchased the suit flat from the Defendant No.1. He submits that the said agreement was registered by Deed of Confirmation dated 26.11.1999. These facts are considered by the Trial Court and directed Applicant to handover the possession of the suit flat to the Plaintiff. Hence, there is no question of granting any interim relief in favour of Applicant.

5 The learned Counsel for the Respondent No.1 further submits that they preferred Appeal from Order No. 633 of 2003 challenging the order dated 09.04.2003 passed by the Bombay City Civil Court in Notice of Motion No. 1460 of 2003. He submits that in that Appeal from Order this Court by order dated 22.09.2003 restrained the applicant from creating any third party right, title and interest in suit flat. He submits that if the present Civil Application is allowed by this Court, in that case, applicant may be restrained by an order of

injunction from creating any third party right, title and interest in suit flat till the hearing and final disposal of the First Appeal.

6 I heard both the sides at length. It is to be noted in the present proceeding that the applicant is in possession of the suit flat as per possession letter dated 16.10.2000. His possession was protected by the Trial Court by order dated 09.04.2003 in Notice of Motion No. 1464 of 2003.

7 Considering the fact that the applicant is in possession of the suit flat since 16.10.2000 and same was protected by the Trial Court during the pendency of the suit by interim order, I am satisfied that Applicant has made out case for allowing Civil Application. But, at the same time, injunction is required to be granted against the applicant from creating any third party right, title and interest in suit flat during the pendency of the First Appeal.

8 Liberty granted to the Respondent No.1 Plaintiff to take out appropriate application, if he so desire for compensation during the pendency of First Appeal in respect of suit flat.

9 Hence, following order.

a) Civil Application is allowed in terms of prayer clause (a), which reads thus:

“a) That pending the hearing and final disposal of the Appeal this Hon'ble Court be pleased to stay the effect, operation, implementation and/or execution of the impugned Order and Judgment dated 3rd February 2014 passed by his Honour Judge Shri. K.A. Kothekar of the Bombay City Civil Court at Dindoshi,

Borivali Division, in S.C. Suit No. 1690 of 2003.”

b) Pending the hearing and final disposal of the First Appeal, the Applicant and his servants, agents or any one claiming through him is restrained from disposing, parting with possession, inducting any third party or creating any third party rights, title and interest in respect of the suit flat No. B-5, 2nd floor, Azad Co. Op. Hsg. Soc. Ltd.

c) Liberty granted to the Respondent No.1 Plaintiff to take out appropriate application, if he so desire for compensation during the pendency of First Appeal in respect of suit flat and that application shall be decided on its own merits.

d) Civil Application is disposed of accordingly.

(K.K.TATED, J.)