

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5643 OF 2015

Rashid Mohammed Munna Khan ... Petitioner
Vs.
Vasundhara A. Ghagare ... Respondent

Mr. Ajaykumar Bholanath Rai for Petitioner.
Mr. R. D. Mishra i/b. A. K. Upadhyay for Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 23, 2016

P.C. :

Heard Mr. Rai, learned Counsel for petitioner and Mr. Mishra, learned Counsel for respondent at length. Rule. Mr. Upadhyay waives service for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 04.04.2015 passed by the learned Ad-hoc District Judge-2, Thane in Miscellaneous Civil Appeal No.35 of 2015. By that order, the learned District Judge partly allowed the appeal preferred by the respondent, hereinafter referred to as plaintiff, and confirmed the order dated 31.01.2015 passed by the learned Joint Civil Judge, Junior Division, Thane below exhibit-5 in Regular Civil Suit No.456 of 2014 with modification that the prayer of the plaintiff for appointment of the Court Receiver stood rejected. The learned District Judge set aside the order dated 31.01.2015 passed by the learned trial Judge below exhibit-13 granting temporary injunction in favour of the petitioner, hereinafter referred to as defendant, in respect of the flat in dispute and dismissed the application exhibit-13.

3. It is not in dispute and is rather evident from perusal of the plaint that plaintiff has instituted Suit under Section 6 of the Specific Relief Act, 1963 (for short 'Act'). Section 6(3) of the Act reads thus,

“6 (3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.”

4. Perusal of Section 6(3) shows that no appeal lies from any order or decree passed in any Suit instituted under Section 6 nor shall any review of any such order or decree be allowed. In view thereof, on this count alone, the impugned order passed by the learned District Judge in Miscellaneous Civil Appeal No.35 of 2015 cannot be sustained. The Appeal preferred by the plaintiff against the trial Court's order, itself, was wholly misconceived and not maintainable. The impugned order is, therefore, set aside and the order of the learned trial Court is restored reserving liberty to the plaintiff to challenge that order, if so advised. Rule is made absolute in the aforesaid terms with no order as to cost.

5. Parties to act on the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab