

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

***APPEAL FROM ORDER NO. 1108 OF 2015
WITH
CIVIL APPLICATION NO. 1377 OF 2015***

Smt.Sushila Dharma Pawar,
C/o Sheetal Prakash Wala, Room No.5,
A/2, Shahu Nagar, Nr. Matunga Labour Camp,
Dharavi, Mumbai – 400 017. ... Appellant/applicant

v/s

Baban Dharma Pawar,
R/at Sativali Village, Nr. Gujrai Pada,
Vasai Road (E), Dist. Thane, & ors. ... Respondents

Ms.Asmat Hippargi i/by T.R.Singh for the appellant/applicant.

Mr.B.A. Powar for Respondent No.1.

Mr.G.B.Walawalkar i/by S.P.Thorat for Resp. No.3.

Mr.A.V.Diwate i/by U.H.Deshpande for Resp. No.5 B.M.C.

CORAM: N.M. Jamdar, J.

DATED : 12 April 2016

ORAL ORDER:

Admit. Taken up for final disposal by consent of parties.

2 The Appellant challenges the order passed by the City Civil Court, Mumbai, dated 5 March 2014 not granting prayer clause (a) of the notice of motion.

3 The Appellant - Plaintiff took out a Notice of Motion No.1581 of 2014 in L.C. Suit No.840 of 2014 for two prayers. Firstly, for appointment of the Court Receiver. Secondly, to restrain the Defendant No.1 from creating third party rights. According to the Appellant, the Appellant was entitled to the residential premises after redevelopment and the Defendant No.1 fraudulently got the premises allotted to him. The learned City Civil Court Judge accepted the contention of the Appellant as regard the prayer clause (b) for restraining the Defendant No.1 from creating third party rights, however, dismissed the notice of motion as regard prayer clause (a) only stating that, in the facts and circumstances of the case, the appellant is not entitled. This is hardly any reason to dismiss the claim for appointment of the Court Receiver when the entire impugned order reads in favour of the Appellant. Learned counsel for the Defendant No.1 sought to argue that Defendant No.1 is a family member and there is no collusion or fraud. However, since the impugned order does not give any reason whatsoever as regard rejection of the Appellant's prayer for appointment of the Court Receiver, it is necessary that the impugned order to the extent that it refused prayer clause (a) of notice of motion is quashed and set aside and the Notice of Motion No.1581 of 2014 is restored for consideration of prayer clause (a).

4 It is clarified that this Court has not commented on the merits of the rival contentions as regard the prayer clause (a) of the Notice of motion, which will be considered by the City Civil Court on its own merits.

5 Liberty to the Appellant to make an appropriate application for

early disposal of the notice of motion.

6 Keeping all contentions open, the appeal is accordingly disposed of in above terms.

7 It is open to the Respondents to file their respective replies.

8 In view of disposal of the appeal, the civil application does not survive and is disposed of.

(N. M. JAMDAR, J.)