

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2926 OF 2016

IN

FIRST APPEAL NO. 381 OF 2012

Shri Jayant Maniklal Lunawat

...Applicant/
Appellant

Versus

Smt. Kamal Arjan Hingorani & Ors.

...Respondents

Ms. Rajani Iyer, Senior Counsel, a/w Mr. Vishal Kanade, Counsel, a/w Ms. Nidhi Singh a/w Ms. Chitrika Patki, i/b Vidhi Partners, for the Applicant/Appellant.

Mr. D.D. Madon, Senior Advocate, Counsel Mr. Astad Randeria a/w Mr. Rajesh Satpalkar, Mr. Mihir Nerurkar, i/b Mulla & Mulla & CBC, for the Respondents No. 1 & 2.

Mr. Fredun Devitre, Senior Advocate, a/w Mr. Karl Tamboly, i/b Harish Joshi & Co., for the Respondents No. 3 & 4.

CORAM : R.M. SAVANT, J.

DATE : 2nd August 2016

PC. :

1. The above Civil Application has been filed for the following relief :-

“Pending the hearing and final disposal of the restored First Appeal No. 381 of 2012 after the application for its restoration being taken up and orders being passed thereon, this Hon'ble Court be pleased to restrain the Respondents, their agents, legal heirs, servants and any person claiming through them from further transferring, alienating, assigning, developing, constructing, utilizing the Suit Property and/or from creating any third party rights/interest in, upon, over the Suit Property or acting in any manner pursuant to the purported Deed of Assignment dated 10th May 2016 entered into between the Respondents being Exhibit C hereto, and/or the Deed of Confirmation of Assignment and Transfer dated 20th June 2016 being Exhibit D hereto.”

2. The said relief was sought in the background of the fact that Civil Application No. 2853 of 2016 which was filed for restoration of the above First Appeal was pending and was listed along with the instant Civil Application. The said Civil Application No. 2853 of 2016 was allowed by this Court by order dated 11th July 2016 and resultantly, the First Appeal has been restored to file.

3. In the context of the relief sought in the above Civil Application, it would be apposite to refer to the interim relief which was passed by a Division Bench of this Court on 11th April 2012 and which was operating in the above First Appeal. The said interim order was to the following effect:-

“Ad-interim relief to continue on the same terms as before the Trial Court.”

4. However, it seems that prior to the Division Bench passing an interim order, there was an order passed by a learned Single Judge of this Court in an Appeal from Order arising out of the interim order passed by the Trial Court, which interim order permitted the Respondents No. 3 and 4 to apply to the Respondent No. 5 herein for membership of the Respondent No. 5 society. However, the prayer for transfer was not acceded to, in view of the fact that the Suit was then ripe for hearing. The interim order dated 11th April 2012 passed by the Division Bench continued till 5th May 2016 when the above First Appeal came to be dismissed for non prosecution. The above First Appeal, as indicated above, has been restored by this Court by order dated 11th July 2016 passed in the said Civil Application No. 2853 of 2016. The Respondents No. 1 and

2 and Respondents No. 3 and 4 have filed Affidavits in Reply in which Affidavits the events which have taken place between 5th May 2016 and 11th July 2016 have been referred to. It is stated that a registered Deed of Assignment has been executed by the Respondents No. 1 and 2 in favour of the Respondents No. 3 and 4 on 10th May 2016 and thereafter, a Deed of Confirmation and Transfer has also been executed by the Respondents No. 1 and 2 in favour of the Respondents No. 3 and 4 on 20th June 2016 to which the Respondent No. 5 society is also a party. Hence, the aforesaid events have taken place in the interregnum between the dismissal of the above First Appeal and restoration of the above First Appeal. Normally, when a proceeding is restored, the *status quo ante* is also required to be restored. However, in the instant case the aforesaid events cannot be lost sight of and hence, the interim reliefs which are to operate pending the above First Appeal would have to be moulded having regard to aforesaid facts.

5. The learned Senior Counsel appearing on behalf of the Respondents No. 3 and 4 Shri. Devitre was at pains to point out that the aforesaid event of the Deed of Assignment and the Deed of Confirmation and transfer being executed as also the fact that the

shares in respect of the Respondent No. 5 society have also been transferred in the names of the Respondents No. 3 and 4 would have to be taken into consideration and therefore, the Respondents No. 3 and 4 be permitted to act upon the documents which have been executed in their favour.

6. In my view, it is not possible to accept the said contention, in the light of the fact that the above First Appeal has now been restored. However, the interest of justice would be served, if interim reliefs are moulded by issuing the following directions:-

- (i) The Deed of Assignment dated 10th May 2016 as also the Deed of Confirmation dated 20th June 2016 executed in favour of Respondents No. 3 and 4 would be subject to the result of the above First Appeal. The contentions of the Respondents No. 3 and 4 based on equities are kept open for being urged at the final hearing of the above Appeal.
- (ii) The Respondents No. 3 and 4 are restrained from acting pursuant to the said Deed of Assignment and Deed of Confirmation in the matter of seeking development permission from the Municipal

Corporation for constructing upon the suit property.

(iii) However, the Respondents No. 3 and 4 will be entitled to use the suit property as it is.

(iv) The Respondents No. 3 and 4 are also restrained from assigning or creating any third party rights. However, they would be entitled to pay the maintenance charges, outgoings to the Respondent No. 5 society.

(v) In addition to Clause (i) as above it is made clear that the contentions of the parties are kept open for being urged at the final hearing of the above Appeal.

7. Since the paper book has been filed, the above First Appeal to be shown for directions on 19th September 2016 for fixing a date of hearing for the same.

8. The Civil Application is accordingly disposed of.

[R.M. SAVANT, J.]