

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

**APPEAL FROM ORDER NO.669 OF 2016
ALONGWITH
CIVIL APPLICATION NO.849 OF 2016**

Chanakya Co-operative Housing Society Ltd. .. Appellant

Versus

Manilal Patel and others .. Respondents

Mr. J. S. Kini i/by Mr. Suresh Dubey for the Appellant.

Mr. M. K. Dubey for the Respondent Nos.1 and 2.

Mrs. M. R. Bhoir for the Respondent No.3 BMC.

CORAM : R.M. SAVANT, J.

DATE : 19th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 30.06.2016 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order, ad-interim reliefs have been refused to the Appellant/original Plaintiff. The ad-interim relief has been refused on the ground that the plaint nowhere discloses as to when the Defendant No.1 has come in possession. The Trial Court has further observed that having regard to the prayer in the Notice of Motion, the same indicates that the Defendant No.1 is already in possession of the suit property.

2 It is the case of the Appellant/original Plaintiff that the

property in question is the office premises of the Plaintiff society. It is further its case that the Respondent/Defendant was taking the lead in so far as opposition to the said office being utilized by a third party illegally is concerned and therefore the Defendant was given the keys to see to it that the illegal utilization of the said society premises is stopped. It is further the case of the Plaintiff that taking advantage of the fact that the keys were handed over to him the Defendant has now entered in the suit premises and seeking to misuse the same. On the other hand, it is the case of the Defendant as pointed out by the Learned Counsel Mr. M. K. Dubey during the course of the hearing of the above Appeal from Order that the Defendant has purchased the suit premises vide agreement to sale executed on 05.10.2007 between one Yogesh Thakkar and the Defendant. The said agreement discloses that it is a notarized document dealing with an immovable property in the city of Mumbai. It is the case of the Defendant that he is in possession pursuant to the said agreement dated 05.10.2007. Prima-facie, the said document begs the question as to how a property could be purchased by a notarized document. Be that as it may, a reading of the impugned order discloses that the Trial court has proceeded on a wrong premise that the Plaintiff has not mentioned the time when the Defendant No.1 came into possession and that the prayers indicate that the Defendant No.1 is already in possession. In my view, it would be

just and proper to set aside the impugned order and direct the Trial Court to decide the Notice of Motion itself. Hence the following directions :-

I) The Learned Counsel appearing on behalf of the Defendant states that an affidavit in reply would be filed within two weeks from date. Rejoinder if any to be filed within one week thereafter.

II) The Trial Court is directed to hear and decide the Notice of Motion latest by 30.09.2016 by giving proper opportunity to the parties.

III) In the meantime, till the Notice of Motion is decided the parties are directed to maintain status-quo as on date. It is clarified that no work of whatsoever nature would be carried out in the suit premises by the Defendant. The Defendant would also not deal with the property in whatsoever manner.

3 With the aforesaid directions, the Appeal from Order is disposed of.

4 In view of the disposal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]