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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO.28476 OF 2016
WITH
CIVIL APPLICATION (ST) NO.28477 OF 2016
IN
APPEAL FROM ORDER (ST) NO.28476 OF 2016.

Satyajit Balasaheb Kadam and anr Applicants
V/s.
Balasaheb A. Kadam and ors Respondents

Mr. Prasad Dani, Senior Advocate a/w Mr. Shardul Singh a/w Mr. Rohan Mahadik i/by Juris Partners, i/by for the Appellants.

Mr. Amit Vyas, with Mr. Pinkesh Shah, i/by Verticas Partners, for the Respondent Nos. 1, 2, 3 and 5.

Ms. Aparna Wagle, i/by has Legal, for respondent No.4.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th OCTOBER, 2016.

P.C. :

1. Heard learned counsel for both the parties.
2. Admit.
2. With the consent of learned counsel for both the parties, appeal is taken up for final hearing at the stage of admission.
3. This appeal is preferred against the order dated 6th October,

2016, passed by the City Civil Court, Mumbai, thereby rejecting ad-interim relief sought in the draft Notice of Motion in Suit No.2275 of 2016.

4. In the Notice of Motion, ad-interim relief was sought restraining respondent bank from conducting auction sale in respect of suit flat.

5. It is common ground between the parties that the Notice of Motion is yet pending before the trial Court for hearing as contesting party respondent bank has not filed its written say to the said Notice of Motion.

6. Considering that the auction of the property is kept tomorrow at 3.00 p.m., interest of justice requires that till the Notice of Motion is decided, the auction sale should not be confirmed, even if the bank may proceed with the auction of the suit property.

7. Learned counsel for respondent bank undertakes to file say to the Notice of Motion pending in the trial Court, within a period of two weeks from today. Accordingly the appeal is disposed of by passing the following order.

Order

- i. Both parties to appear before the trial Court, for hearing of Notice of Motion on 15.11.2016. In the meanwhile respondent bank to file its written say to the Notice of Motion pending before the trial Court and give its copy in advance to learned counsel for appellant.

- ii. The trial Court to proceed with the hearing of Notice of Motion as expeditiously as possible and dispose of the same preferably within a period of one month thereafter.
- iii. The respondent bank may proceed with auction as scheduled, but till the Notice of Motion is decided, respondent bank not to confirm the auction sale.
- iv. The contentions of both parties are left open including the contention which respondent bank wants to raise relating to the jurisdiction of the trial Court, over the subject matter of the dispute.

6. In view of disposal of Appeal Civil Application (ST) No.28477 of 2016 becomes infructuous and the same is disposed of accordingly.

[DR. SHALINI PHANSALKAR JOSHI, J.]