

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

**APPEAL FROM ORDER (ST.) NO. 28618 OF 2016
WITH
CIVIL APPLICATION (ST.) NO. 28620 OF 2016
IN
APPEAL FROM ORDER (ST.) NO. 28618 OF 2016**

Mr.Rajdev s/o.Gangaram Jaiswal	...	Applicant/ Appellant
Versus		
Mrs. Laxmi w/o. Suresh Gupta	...	Respondent

Mr.A.M.Saraogi for the Applicant/Appellant.
Mr.H.S. Anand for Respondent.
Mr.M.R. Mandawgade, Court Receiver.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH OCTOBER, 2016.

P.C. :

1] This appeal is preferred against the common order passed by the City Civil Court at Dindoshi (Borivali Division), Goregaon, Mumbai on 23rd September, 2016 thereby dismissing Notice of Motion No.2094 of 2014 filed in S.C. Suit No.1901 of 2014 and allowing Notice of Motion No.55 of 2015 in S.C. Suit No.2585 of 2014.

2] The order which is passed in Notice of Motion No.55 of 2015 in S.C. Suit No.2585 of 2014 is under Section 6 of Specific Relief Act, 1963 thereby directing the possession of the suit premises to be restored to the plaintiff in that suit.

3] The learned counsel for the respondent in this respect has pointed out that in the light of the provisions of Section 6, Sub-Clause 3 of the Specific Relief Act, 1963, 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] The learned counsel for the respondent also drawn attention of this Court to the definition of the order is given in Section 2(14) which is to the effect that the order means “the formal expression of any decision of a Civil Court which is not a decree”. In this case, he has submitted that as the impugned order passed by the trial Court is under the provisions of Section 6, Sub-Clause 3 of the Specific Relief Act, 1963 thereby restoring the possession of the plaintiff in the said suit, as rightly submitted by him, the appeal itself against the said order will not be maintainable.

5] At this stage, the learned counsel for the appellant submitted that this is a common order by which the trial Court has dismissed the Notice of Motion filed by the appellant in his own suit bearing S.C. Suit No.1901 of 2014. The said Notice of Motion was for restraining the plaintiff in Suit No.55 of 2015 from causing obstruction to his possession. It is urged that against the said order the appeal is maintainable.

6] However, once it is held that the appeal is not maintainable against one part of a common order passed by the trial Court then it follows

that the proper remedy for the appellant is to approach the proper forum. This Court cannot deal with the other part of the order against which appeal may be maintainable.

7] The learned counsel for the respondent in this respect has also drawn attention of this Court to the decision of this Court in *Sangita Sunil Bhardiya Vs. Rajendra Babulal Sarnot*¹, wherein it was held that against the decree passed in suit under Section 6 of the Specific Relief Act, 1963 Revision Application can be maintainable.

8] Now it will be for the appellant to find out the proper forum for challenging the order in the trial Court. As a result thereof, the appeal stands disposed of being not maintainable.

9] It is pointed out that as per the order passed by this Court on 15th October, 2016 the Court Receiver has taken symbolic possession of the suit premises. To that effect he has submitted his report alongwith photographs. In view thereof, the Court Receiver stands discharged, subject to payment of costs and expenses deposited by respondent without passing of account.

10] In view of the disposal of the appeal, nothing survives in the Civil Application and the same also stands disposed of.

(DR.SHALINI PHANSALKAR-JOSHI, J.)

¹ 2006(3) Mh.L.J. 637