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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4590 OF 2016
IN
FIRST APPEAL (ST) NO.30206 OF 2016

Rajan Mehta Applicant
V/s.
Prafulla B Shah and anr Respondents

Mr. Kalpesh Joshi, I/by Kalpesh Joshi Associates, for applicant.
Mr. K. H. Mody, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH OCTOBER, 2016.

P.C. :

1. This application is preferred by the appellant, who was original plaintiff seeking relief of interim injunction restraining respondent from creating third party interest in the suit flat and also for appointment of Court Receiver during pendency of the suit.

2. It is submitted by learned counsel for appellant that the appellant had sold out flat to respondent vide agreement to sale dated 30th May, 1992 for total consideration of Rs.5,28,000/-. Out of the same, respondent has made only part payment of Rs.2,25,000/-. However, despite due notice, respondent failed to pay the balance amount and hence appellant filed suit after terminating the agreement and also for getting possession of the said flat. It is submitted that during pendency of

the suit, there was order of ad-interim relief of injunction restraining respondent, from creating third party interest in the suit flat. However, now in view of the dismissal of suit on 17.9.2016, it has become necessary to seek interim injunction restraining respondent from creating third party interest and for appointment of Court Receiver.

3. Learned counsel for respondent has strongly resisted this application and in my considered opinion, rightly so. Perusal of the impugned judgment and order passed by the trial Court, reveals that the trial Court after taking into consideration of the submissions and evidence adduced on record by both parties has come to the categorical finding that the suit is barred by limitation. The trial Court has also considered that if some amount has remained to be paid towards consideration, it is not believable that possession of the suit flat would have been handed over. In such situation, in my considered opinion, merely because during pendency of the suit, some interim relief was running is not sufficient to grant stay. No ground is made out for grant of interim relief restraining respondent from creating third party interest in the suit flat or for appointment of Court Receiver. Application, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR JOSHI, J.]