

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order (ST) NO. 33724 OF 2016
with
Civil Application (St) No.33725 of 2016

Mr. Vijay Lalchand Lakhani	...Appellant
<i>Versus</i>	
Mr. Jagdish Lalchand Lakhani And Anr	...Respondents

Mr.M.S.Pandey, for the Appellant.

None for the Respondents.

CORAM : G.S.KULKARNI, J.
DATE : 8th DECEMBER, 2016.
(At 4.30 p.m.)

P.C. :

1. Not on board. Taken on board on a praecipe as moved on behalf of the Appellant.
2. Heard Mr.M.S.Pandey, learned Counsel for the Appellant. This appeal is directed against an order dated 6 December 2016 passed by the learned Judge, City Civil Court at Mumbai whereby an application as moved on behalf of the Appellant-Plaintiff for continuation of earlier ad-interim order dated 17 March 2016, has been rejected. The learned Judge in the impugned order has recorded that the said interim order was

already discontinued and there is no just reason to revive the same and in view thereof the application of the Appellant-Plaintiff was rejected. The claim of the Appellant-Plaintiff is that he has filed the suit in question seeking partition of the joint family property of his father late Lalchand T. Lakhani. The prayers in the plaint are for a declaration that the Plaintiff is entitled to 20% share in the suit flat i.e. Flat No.701, 7th Floor, 457, Pintos Park View, Linking Road, Bandra (West), Mumbai-400050. It is stated that this is the only property and no other property forms the subject matter of the prayers in the plaint. What is interesting to note is that in this partition suit the other legal heirs of late Lalchand T. Lakhani are not impleaded as parties by the Appellant-Plaintiff, but curiously Respondent No.-2 State Bank of India has been impleaded as defendant. The suit in question was instituted some time in March,2016 and it is stated that till date Respondent No.1 has not filed any contesting affidavit to the prayers which are made on behalf of the Appellant-Plaintiff. It appears from the tenor of the plaint that Respondent No.1 had mortgaged the suit flat with Respondent No.2-State Bank of India to avail a loan. From the communication as referred by the Plaintiff at page 29, it appears that as on date there are dues of Rs.4.06 crores which are payable to Respondent No.2 by the Appellant. It appears that on a communication dated 11

November 2016 Respondent No.2 has initiated a process to auction the suit flat and informed of the same to the Secretary of the Society that the sale price has been fixed at Rs.4.06 crores and that the auction has been kept on 9 December 2016. Perusal of the plaint also reveals that it is not a wholehearted partition suit as none of the other heirs are impleaded as parties but Respondent No.2-State Bank of India is impleaded as a party and reliefs have been sought only on the ground that they are likely to prejudice the rights of the Appellant by auctioning the flat in question.

3. Be that as it may, it appears that the State Bank of India has initiated an action to auction the suit flat under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Securitisation Act'), in view of the flat being mortgaged to Respondent No.2 by Respondent No.1. The proceedings under the Securitisation Act are independent proceedings. If the Appellant-Plaintiff has any grievance of about any action being resorted to by Respondent No.2 under the Securitisation Act and which was in March, 2016, the Appellant had a remedy to approach the appropriate forum/Tribunal as available under the said Act, and seek appropriate orders if he had any legal interest in the flat in question. However, it

appears that the Appellant-Plaintiff chose to file the suit in question and the whole intention of the Appellant to file the suit appears to be to restrain Respondent No.2-State Bank of India from proceeding to auction the suit flat. In any event as the learned Judge has observed in the impugned order that the ad-interim protection which was initially granted on 17 March 2016, itself has come to an end, I do not find any merit in the submissions as made on behalf of the Appellant-plaintiff that the ad-interim stay needs to be continued or for that matter any interference is called for in this appeal. Respondent No.2 cannot be restrained from proceeding under the Securitisation Act in this suit. The Appellant-Plaintiff has appropriate remedy in that regard. The impugned order even other does not call for any interference.

4. Resultantly, in my opinion, the appeal is totally without any merit and is accordingly rejected. No costs.

5. Civil Application (st) No.33725 of 2016 would also not survive and is accordingly disposed of.

[G.S.KULKARNI, J.]