

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO. 398 OF 2016
IN
NOTICE OF MOTION NO. 710 OF 2016
IN
SUIT NO. 256 OF 2012
WITH
NOTICE OF MOTION (L) NO. 3108 OF 2016
IN
APPEAL (L) NO. 398 OF 2016**

Mr. Zulfikar Mohammedhussain Kagalwala .. Appellant
versus
Mr. Zulkarnain Mohammedhussain
Kagalwala & Ors. .. Respondents

Mr. Shekhar J. with Mr. Madhav V. Thorat for Appellant.
Mr. J. P. Sen – Senior Advocate with Mr. Narayan S., Murtaza Federal,
Ms Spenta H. with Ms. A. Abhayankar i/b. M/s. Federal & Rashmikant
for Respondent No. 1.
Mr. G. G. Ketkar – Ist Assistant to the Court Receiver.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.
DATE : 30 NOVEMBER 2016**

P.C.:

1] Heard learned counsel for the appellant. Though the present appeal is filed impugning several orders dated 2nd September 2016, 14th September 2016, 26th September 2016, 30th September 2016 and 14th October 2016, learned counsel submits that in the light of single appeal not being maintainable challenging these many orders, he would restrict his appeal to the order dated 2nd September 2016.

2] Apparently, the entire issue revolves around the interim orders said to have been made on 10th April 2013. According to the respondents, in spite of an order of restraint dated 10th April 2013, the

second defendant parted with possession of the property behind the back of the parties and therefore there is breach of Order XXXIX Rule 1 and 2 of CPC. When this came to be brought to the notice of the Court, the above mentioned orders in series were made, however now we are concerned with the order dated 2nd September 2016.

3] According to the appellant, the observations of the learned Judge in the impugned order in paragraphs 2 and 3 would come in the way of merits of the case, since leave and licence will not amount to breach of order dated 10th April 2013, there is no question of parting with possession of the property. Learned Judge in paragraph 2 refers to the citations relied upon by the appellant and however he does not make any finding finally so far as breach of order dated 10th April 2013, however he finds that the material or the information brought on record would indicate that there is creation of some right in third party and therefore learned Judge opines that there is *prima facie* breach of interim order dated 10th April 2013.

4] Apparently the order dated 2nd September 2016 has not finally decided the application filed under Order XXXIX Rule 2A of the CPC. The matter is yet to be heard and decided and the same has to be disposed of as contemplated under Order XXXIX Rule 2A of the CPC. In order to safeguard the interest of the parties and the properties involved, the learned Judge opined that it would be better if the amounts received beyond Rs.60,000/- by the second defendant / appellant shall be deposited in the Court. In other words, whatever amounts were received as admitted by the appellant / second defendant were directed to be deposited before the Court and the notice of motion was kept pending so far as other prayers are concerned. Apparently, the licensee seems to have given certain

information when the Receiver went to take possession of the property. This seems to have given rise to the present position why the property should be kept in the management of the party in question or that why it should not be kept in the hands of the second defendant. Therefore for better management and for transparency, opined that the property should be with the Receiver.

5] In that view of the matter, it is not possible for us to opine that the learned Judge has formed an opinion so far as the complaint raised in an application under Order XXXIX Rule 2A of the CPC. Only upon being convinced *prima facie* so far as the allegation of breach of interim order, order dated 2nd September 2016 was passed. It is still open to the appellant to argue and convince the Court that there was no breach whatsoever so far as the order dated 10th April 2013. As a matter of fact, the then learned counsel representing the appellant readily agreed to bring back all the amounts received by the appellant after 10th April 2013.

6] In that view of the matter, we decline to intervene with the order dated 2nd September 2016 since it does not warrant any interference.

7] Appeal is dismissed.

8] In view of dismissal of the appeal, notice of motion (I) no. 3108 of 2016 does not survive and stands dismissed.

CHIEF JUSTICE

(M. S. SONAK, J.)