

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

**APPEAL FROM ORDER (ST) NO.5263 OF 2017
WITH
CIVIL APPLICATION (ST) NO.5265 OF 2017
IN
APPEAL FROM ORDER (ST) NO.5263 OF 2017**

Salamatullah Barquartullah
(Deceased) Thr. Lrs.

Mr.Shakirullah Salamatullah
V/s.

..Appellant/Applicant

Maharashtra Housing & Area
Development & Ors.

..Respondents

Mr.M.A. Choudhari a/w Ms.Kanchan Pawar for the
Appellant/Applicant.

Mr.R.D. Dave for Respondent No.2.

CORAM : M. S. SONAK, J.

DATE : 15 MARCH 2017.

P.C.

1. Heard Mr.Choudhari for the Appellant and Mr.Dave for the respondent No.2.

2. Mr.Choudhari states that notice has been duly served upon respondent No.1-MHADA. For the course which is proposed to be adopted in this matter, there is no necessity to await any representation on behalf of MHADA.

3. The challenge in this appeal is to the order dated 17 February 2017 by which the learned Trial Judge has vacated the ad-interim order granted on 09 February 2017 mainly on the ground that the appellant has suppressed certain orders.

4. Mr.Choudhari submits that the final order made by this Court in First Appeal No.515 of 1998 was produced and there was no suppression. He submits that interim order dated 25 September 1998 made by this Court in First Appeal No.515 of 1998 was not produced, as the appellant was under a bonafide impression that the same stands merged with the final order in the Appeal. Mr.Choudhari submits that this is not a case of suppression and therefore, the impugned order warrants interference.

5. On the other hand Mr.Dave, points out that in the interim order dated 25 September 1998, the following direction had been issued.

“(ii) In case the plaintiff gets possession of the premises in execution of the decree which is impugned in the first appeal, his possession would be subject to the result of this appeal.

(v) *The plaintiff after getting possession of the premises in execution of the decree shall file an undertaking in this court, undertaking therein to deliver the premises to the appellant/defendant No.2 if so directed by this court within such a time as may be directed by this court by final order passed in the first appeal No.515/98.”*

6. Mr.Dave submits that since, the appellant was permitted to occupy the suit premises subject to the aforesaid directions, it was incumbent upon the appellant to have brought such directions to the notice of the learned Trial Judge at the time when the ad-interim relief was obtained.

7. There is substance in the submission made by Mr.Dave that the parties who applied for interim or ad-interim relief must approach the Court after producing and disclosing all the relief documents/orders. In this case, it does appear that the order dated 25 September 1998 was, to some extent, relevant and the appellant, should have disclosed the same at the very outset. However, the submission made by Mr.Choudhari that there were no malafides

involved or that this is not a case of willful suppression also cannot be rejected at the outset. This is because the appellant has disclosed the final order made in First Appeal No.515 of 1998 and it is possible that the appellant, or in all probabilities, his advocates were under the bonafidie impression that further disclosure of interim orders was unnecessary, since, they were of the opinion that interim orders merge with the final order.

8. Be that as it may, the present position as it stands is that the suit premises have been sold/locked by MHADA, there is no reason to change this status-quo at this stage. The status-quo is, therefore, directed to continue until the Notice of Motion taken out by the appellant is heard and disposed of in accordance with law.

9. Further, the learned Trial Judge is directed to take up for consideration and dispose of the appellant's Notice of Motion as expeditiously as possible and in any case, within a period of eight weeks from today. Notice of Motion shall be disposed of on its own merits and in accordance with law. The learned Trial Judge will not regard the non-production of the interim order dated 25 September 1998 as a willful suppression. However, the effect of the interim order dated 25 September 1998 shall be duly considered by the

learned Trial Judge.

10. All contentions of all parties are left open.

11. The appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

12. The parties are directed to appear before the learned Trial Judge on 24 March 2017 and produce an authenticated copy of this order.

13. In view of the disposal of the Appeal, the Civil Application does not survive and the same is disposed of.

(M. S. SONAK, J.)