

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER NO. 100 OF 2017  
AND  
CIVIL APPLICATION NO. 139 OF 2017

Kifayat Mohammed Hussain .. Appellant  
vs.  
Mrs. Raziabegum Mohammed Husain and anr. .. Respondents

Mr. P.J. Thorat for the Appellant.  
Mr. Himanshu Tadke i/b R.U. Singh for Respondent No.1.

**CORAM : M. S. SONAK, J.**  
**DATE : 22 MARCH 2017.**

**P.C. :-**

1] Mr. P.J. Thorat, learned counsel for the appellant, states that the presence of respondent No.2 is not necessary for disposal of this appeal. Accordingly, he seeks leave to delete respondent No.2 from the array of respondents. Leave is granted. Necessary amendment to be carried out forthwith.

2] With the consent of and at the request of learned counsel for the parties, this appeal is taken up for final disposal at the stage of admission itself.

3] The challenge in this appeal is to the order dated 2 February 2017, by which, the learned Trial Judge has made absolute, Notice of Motion No. 1380 of 2014 taken out by respondent No.1 (original plaintiff). The plaintiff, is the mother of the appellant.

3] By the impugned order, the learned Trial Judge has appointed a Receiver in respect of the property, i.e., Flat No.311, Wing C, 3<sup>rd</sup> Floor, Raj Ratan Cooperative Housing Society, Jogeshwari (East), Mumbai (suit premises). Further, by the impugned order, the appellant has been restrained from transferring, disposing of and/or dealing with, and/or creating any third party rights in respect of the suit premises.

4] The entire reasoning in the impugned order, is set out in paragraphs 6 and 7, which read thus:

*“6. I have heard the Learned Counsel for the parties. Perused the documents filed on record.*

*6. There is no dispute that the Plaintiff was the owner of the Suit property. The challenge in the Plaint is the Agreement of Sale dt. 11<sup>th</sup> April 2007. Taking into consideration the grounds raised and the consideration paid by Defendant No.1 to the Plaintiff, there appears to be prima facie doubt in the just execution of the Agreement of Sale dt.11<sup>th</sup> April, 2007. In any case, Defendant No.1 is son of Plaintiff. The Plaintiff is a Senior Citizen. The conduct on the part of the Defendant No.1 is unjustified. To preserve the property and to protect the rights of the Plaintiff, it would be just to pass the following Order:-*

ORDER

- 1. Notice of Motion NO. 1380/2014 is made absolute in terms of prayer clause (a) and (b)*
- 2. Costs in main cause.”*

5] Insofar as the relief in terms of prayer clause (b) of the notice of motion is concerned, there is no reason to disturb the same. However, the statement of Mr. P.J. Thorat that presently, the suit premises are being occupied by one Mr. Pawan Gupta as a licensee is accepted. Mr. Thorat states that the said licensee is paying a licence fees of Rs.16,000/- per month to the appellant. Out of which, the

appellant is required to spend the amount of Rs.3,500/- per month towards maintenance of the suit premises.

6] However, insofar as the relief in terms of prayer clause (a) of the notice of motion is concerned, the same is quite unsustainable and is required to be vacated. There are no reasons set out for the appointment of court receiver. The Division Bench of this Court in ***B.D.A. Ltd., Bombay vs. Central Bank of India and ors – 1995(4) Mh.L.J. 91***, has ruled that the appointment of Receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases. The element of danger is an important consideration and the Court will not act on possible danger but the danger must be great and imminent demanding immediate relief. Receiver is not to be appointed unless there is some substantial ground for such interference, such as a well founded apprehension that the property in suit will be dissipated or other irreparable mischief may be done unless the Court appoints a Receiver. Further, before resorting to such a harsh remedy, the order providing for such a remedy should articulate reasons for such exercise. In this case, there are hardly any reasons justifying the appointment of a Court Receiver.

7] However, some conditions are required to be imposed upon the appellant, who is son of respondent No.1. As noted by learned Trial Judge, there appears to be some doubt with regard to the execution of the agreement of sale dated 11 April 2007, on basis of which, the appellant claims right to the suit premises. In these circumstances, it is only appropriate if the appellant pays Rs.8,000/-

per month to respondent No.1, pending disposal of the suit. Such amount is to be deposited in the bank account of respondent No.1 on or before 10<sup>th</sup> day of each succeeding month.

8] Accordingly, the impugned order is modified. The observations in the impugned order as also in the present order, are only *prima facie*, and such observations need not influence the learned Trial Judge, at the stage of the disposal of the main suit.

9] Since the respondent No.1 is a senior citizen and aged 75 years, the hearing in the suit is also expedited.

10] The appeal is disposed of in the aforesaid terms.

11] Upon disposal of the main appeal, the civil application for stay does not survive and the same is also disposed of.

12] All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**

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