

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.892 OF 2014**

K Mani Naidu	...Appellant
<i>Versus</i>	
Mahesh Vishandas Chandwani	...Respondent

Mr Suresh Rajeshwar, for the Appellant.
Mr Jitendra M Patil, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 6th June 2017

PC:-

1. The Appeal by the original Defendant is directed against an order dated 17th February 2013. Apart from the question of condonation of delay, the Defendant also sought to recall, modify or vacate a statement he made and that is recorded by this Court in an order passed five years earlier by this Court on 23rd November 2009 in Notice of Motion No.4038 of 2008. That was at the time and the Suit was filed on the Original Side of this Court and before it was transferred to the City Civil Court.

2. Cutting a very long story short, the Defendant's case before the Trial Court was that a 'change in circumstances' necessitated relief. It is the Defendant's case that he had been made the victim of fraud. The Defendant had received no amount from the Plaintiff for

the sale transaction of the flat in question. Before the Trial Court the fact that the agreement was disputed and that the Defendant had now raised allegations of fraud are not *per se* sufficient to warrant the kind of order the Defendant sought. Before this Court on 23rd November 2009 the Defendant gave an undertaking. Before the Trial Court in the order under Appeal it was urged that the circumstances had since changed. There were subsequent facts that, according to the Defendant, had now come to light. All of these assertions were contested by the Plaintiff. The statement that was made to this Court in the year 2009 was that the Defendant would not create third party interests in the Suit flat without leave of the Court. The learned Judge correctly found that to reverse position on this order recording the statement at an interim stage would be inappropriate. In paragraph 9 of the impugned order, the learned Judge correctly observed that without the sound basis for recalling the undertaking, and if the Defendant even now says he is not disposing of the suit property pending the Suit, recalling of the order of 23rd November 2009 is unjustifiable.

3. I agree. If the Defendant proposes to allege fraud and seeks substantive relief on that basis, he must initiate appropriate proceedings. I will protect him to the extent of keeping open all contentions in that behalf. In this view of the matter, leaving open the right of the Defendant to adopt suitable proceedings in regard to his allegations of case on fraud, the Appeal is dismissed as withdrawn with no order as to costs.

(G. S. PATEL, J.)