

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

APPEAL FROM ORDER NO. 654 OF 2016
 WITH
 CIVIL APPLICATION NO.961 OF 2016
 IN
 APPEAL FROM ORDER NO.654 OF 2016

Siddharth Rajendra Bhate	...	Appellant
V/S		
Smt Amita Vinod Bhate And Ors		Respondent
...		
Mr Saurabh Vivek Patil for the Appellant		
Ms. Geetika Jain i/by M/s. Bilawala & Co. for the Respondents Nos. 1 & 2.		

...
CORAM : A.A. SAYED, J.

DATED : 6 MARCH 2017

P.C.:

On the last occasion when the matter was heard, this Court had prima facie opined that this is not a fit case for interference with the impugned order. The matter was directed to be listed today First on Board in view of the statement made by the learned Counsel for the Appellant that the Appellant may be willing to furnish security.

2. Today, the learned Counsel for the Appellant states that he may be discharged from the matter.

3. As stated earlier, the matter was substantially heard and was kept First on Board only for the aforesaid purpose at the instance of the learned

Counsel for the Appellant. The conduct of the Appellant in seeking to change his Advocate at this stage cannot be countenanced. I am therefore not inclined to grant discharge of the learned Counsel as suggested.

4. Learned Counsel for the Respondents Nos.1 and 2 states that in pursuance to the impugned order, the suit properties are already attached as the Appellant had failed to furnish security and nothing survives for consideration in the present Appeal from Order.

5. In the impugned order the Trial Court has held as follows:

“2) This is a suit for declaration recovery of amount and compensation of amount of Rs. 9,55,44,025=68ps. In the suit, the plaintiffs have filed application under order XXXVIII Rule 5 of C.P.C. At Exh. 5 and prayed that, defendants intending to transfer the properties. If he is succeeded the purpose of the suit will be fruitless.

3) It is to be noted that the suit summons was served on the defendant. Defendant appeared on 17-7-2015 and by filing applications he seek time for engaging Advocate. Accordingly one month time has been granted to the defendant and matter posted for 17-7-2015. In the mean time on 19-6-2015, 24-6-2015 and 25-6-2015 defendant has transferred his entire properties by executing Gift deed in the name of his parents and sister. The above execution of the document are during the pendency of the suit. Considering

these facts, it is noticed that the defendant intentionally obstructed and delaying the suit and avoiding the payment. Therefore, at this stage, in my view some directions are necessary to the defendant for furnishing the security of the suit amount Rs. 9,55,44,025/- under order XXXVIII sub Rule 2 of the C.P.C. on next date, otherwise the transferred properties will be attached. Hence, the order.

ORDER

- 1. Application (Exh. 56) is partly allowed.*
- 2. The defendant Siddharth Rajendra Bhate is directed to furnish security of Rs.9,55,44,025/- on the next date.*
- 3. If the defendant fails to furnish the security as per order, then the entire transferred properties by the defendant will be attached.”*

6 Considering the fact that the Appellant has transferred the suit properties after the suit summons was served and during the pendency of the suit, even otherwise, no fault can be found in the impugned order. Moreover, the conduct of the Appellant dis-entitles him to any reliefs in the present Appeal from Order.

7. The Appeal from Order shall accordingly stand dismissed.
8. The Civil Application would not survive and to stand disposed of.

(A.A. SAYED, J.)