

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3136 OF 2013
IN
FIRST APPEAL NO. 1096 OF 2013

Mr. Rajmal M. Jain .. Applicant/ Appellant.

vs.

Mangal Murti Developers Pvt. Ltd. .. Respondents.

Mr. Ramesh Chheda for the Applicant/Appellant.

Mr. P.S. Gidwani for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 7 MARCH 2017.

P.C. :-

- 1] Heard learned counsel for the parties.
- 2] The subject matter of the suit and consequently the appeal, is three apartments bearing No.102 (C), 101(C) and 102(B).
- 3] Mr. Chheda, learned counsel for the applicant states that a restraint be imposed upon the respondents to create any third party rights or part with possession of these suit apartments pending the disposal of the appeal. Mr. Chheda submits that the ad-interim *ex parte* in these terms had already been granted to the applicants.
- 4] Mr. Gidwani, learned counsel for the respondents, submits that apartment No.102(B) was sold some time in the year 2008. Further, in respect of apartment Nos.101(C) and 102(B), the appellant has produced not any evidence/documents. Mr.Gidwani submits that even in respect of apartment No. 102 (C), no

legal evidence has been produced and therefore, the suit has rightly been dismissed. He submits that the ad-interim order granted earlier was *ex-parte*. On this basis, he submits that this is not a fit case for grant of any interim relief.

5] Insofar as flat Nos.101(C), 102(B), there is no case made out for grant of any interim reliefs. Merely on the grounds of pendency, the appellant-applicant, cannot, seek for such restraint orders against the respondents in respect of the two apartments. However, in respect of apartment Nos.102(C) is concerned, the ad-interim order granted earlier can be confirmed subject to the applicant depositing in this court a sum of Rs.7,500/- each month from 1 March 2017. Such amount is required to be deposited because on basis of restraint which the appellant seeks, the respondents are required to be restrained from creating any third party rights in respect of the said apartment.

6] Learned counsel for the appellant submits that the appellant himself is occupying the suit premises and using the same as their site office. This may be. However, since, a restraint upon the transfer is being imposed, the same cannot be unconditional.

7] In case of any two consecutive defaults or three non-consecutive defaults, this interim order shall stand vacated. The amounts, if deposited in this court, may however, not be withdrawn by the respondents. Such amounts shall abide by the final orders that may be made in the appeal.

8] The aforesaid observations are only *prima facie* and for the purposes of deciding the civil application.

9] Accordingly, the Civil Application is disposed of.

(M. S. SONAK, J.)

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