

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

**APPEAL FROM ORDER NO.946 OF 2015
WITH
CIVIL APPLICATION NO.1157 OF 2015
IN
APPEAL FROM ORDER NO.946 OF 2015**

Shri.Shaukat Dawood Rakhangli ..Appellant/Applicant
V/s.

Smt.Rayamathbai Sabirali Kadri ..Respondent

Mr.Suraj Kudalkar for the Appellant/Applicant.

Ms.Hina Mody for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 08 MARCH 2017.

P.C.

1. Heard learned counsel for the parties.
2. The challenge in this appeal is to the order dated 26-09-2014 by which the appellant's Notice of Motion came to be dismissed with costs of Rs.2,000/-
3. As against an order of this nature, an appeal would not lie under Section 104 of the C.P.C. read with Order XLIII Rule 1. Therefore, this appeal will have to be dismissed on the ground of maintainability.

4. However, the dismissal of this appeal will not preclude the appellant from taking out appropriate proceedings to challenge the impugned order.

5. The appellant applied for “continuance of interim relief” in the form of stay of proceedings before the learned Trial Judge. Ms. Mody, the learned counsel for the respondent points out that there is no such interim relief and therefore, there is no question of any continuance of interim relief. She points out that submissions were made before the learned Trial Judge on the fact that there is no continuing interim relief. As a result the suit could not proceed right from the year 2014. This Court, on 03 November 2014 made the following order :-

“Office objections are to be removed.

1. Issue notice to the respondent returnable on 1st December, 2014. In addition to Court service, private service permitted. Till then, trial Court not to proceed.”

6. Thereafter, the matter came up on 13-01-2015 where, despite the appellant or his advocate remaining absent, certain indulgence was shown to the appellant in the matter of clearance of office objections. The directions to the learned Trial Judge not to proceed with the suit was not continued.

7. On 06-07-2015, once again, the matter was taken up in

the context of recall of self operation order dated 13-01-2015. The order was recalled and the matter was restored, however, once again, there was nothing said about continuation of interim relief. There is no further order as regards to the grant of continuation of interim relief.

8. In the aforesaid circumstances, the learned counsel for the respondent is correct that the appellant, on the basis of the misstatement has stalled the progress in the suit, since, the year 2014. Accordingly, the appellant is directed to pay costs of Rs.10,000/- to the respondent. Such costs to be paid or deposited before the learned Trial Judge within a period of two weeks. Upon deposit the respondent shall be at liberty to withdraw the same unconditionally.

9. In view of the dismissal of the appeal, civil application does not survive and the same is also dismissed accordingly.

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

(M. S. SONAK, J.)