

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

**CIVIL APPLICATION NO. 294 OF 2016
IN
FAMILY COURT APPEAL NO. 252 OF 2013**

Mr. Ajay Vasudev Gawande ..Applicant
(Org. Respondent)

v/s.

Mrs. Megha Ajay Gawande ..Respondent
(Org. Appellant)

Ms. Frahnak Contractor for the Applicant
Mr. Amogh Karandikar i/b. Khandeparkar & Associates for the
respondent-wife.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
DATED : 18TH JANUARY, 2017**

P.C.

1. This is an application made by the husband seeking interim reliefs in terms of paragraph 15 which reads thus:-

“15 (a) Pending the hearing and final disposal of the present appeal this Honourable Court be pleased to restrain the Respondent from creating third party interest

and/or sell transfer or surrender part with possession or dispose off in any manner in respect of said flat premises viz. 8, Haral Kutir, Greater Bombay Veersaira Cooperative Housing Society Ltd., Chincholi Bunder Road, Malad (West);

(b) Pending the hearing and final disposal of the present appeal this Honourable Court be pleased to restrain the respondent from creating third party interest and /or sell transfer or surrender part with possession or dispose off in any manner in respect of the said premises viz. B-305, Mill Co-operative Housing Society Ltd., Somwar Bazaar, M.L.Cross Road, Malad (West), Mumbai 400 064. ”

2. This application is filed in Family Court Appeal Nos. 252 of 2013 and 253 of 2013. There were two proceedings filed before the Family Court. The applicant-husband filed Petition No. A 1683 of 2006 seeking a decree of divorce and the wife filed petition No.A 2604 of 2008 seeking a decree of restitution of conjugal rights. The wife sought relief in her petition before the Family Court in respect of flat No.B-305 which is subject matter of prayer clause (b) of this

application. The said relief was rejected by the Family Court. The Family Court allowed the petition for divorce filed by the husband and dismissed the petition for restitution of conjugal rights filed by the wife. Being aggrieved by the decrees passed in both the petitions, the wife has preferred the abovesaid two Family Court appeals, which are pending for final hearing.

3. As far as the flat in Haral Kutir, which is subject matter of the first prayer is concerned, admittedly the applicant never claimed any relief in respect of the said flat in the petition filed by him before the Family Court. The same is the case with the other flat being flat No.B 305 in Mili Co-operative Housing Society Ltd. In any event, flat No. B-305 is in possession of the applicant husband.

4. Therefore, no relief can be granted in favour of the applicant in relation to both the flats in the present Family Court Appeals. It is for the applicant to adopt appropriate proceedings in accordance with law in that behalf.

5. Subject to the above observations, the application is rejected.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)