

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1149 OF 2015
WITH
CIVIL APPLICATION NO. 1436 OF 2015
AND
CIVIL APPLICATION NO. 1435 OF 2015
IN
APPEAL FROM ORDER NO. 1149 OF 2015

Mrs. Gulshan Rohinton Irani .. Appellant
vs.
Maharashtra Housing and Area
Development Authority & Ors. .. Respondents

Mr. P. J. Ramchandani for Appellant.
Mr. D. Tiwari and Mr. Lad for Respondents.

CORAM : M. S. SONAK, J.
DATE : 16 MARCH 2017

P.C :

1] Heard Mr. Ramchandani for the appellant and Mr. Tiwari and Mr. Lad for respondents.

2] On 1 February 2017, this court made the following order :

"1. Issue notice to the respondents, returnable on 01 March 2017. The notice to indicate that endeavour shall be made to dispose of this appeal finally at the stage of admission taking into consideration the short point involved. In addition to the usual mode of service private service is also permitted and the appellant to file affidavit of service."

3] Accordingly, this appeal is being disposed of finally at the stage of admission.

4] The appeal challenges order dated 10 September 2015, by which, the learned trial Judge, has declined to take any action under Order XXXIX Rule 2A of CPC. The entire reasoning is contained in paragraphs 10, 11 and 12 of the impugned order, which read as under:

“10. I have carefully gone through the Notice of Motion, affidavit and affidavit in reply.

11. It is crystal clear from the affidavit filed by the plaintiff that the Hon'ble High Court has passed order on 21.2.2013 in A.O. No. 834 of 2012. The plaintiff has filed this Contempt Notice of Motion for taking action under Order 39 Rule 2A of CPC against contemptnor for breach of the order passed by the Hon'ble High Court, in A.O. No. 834 of 2012 in this Court. It may be stated that plaintiff should have filed necessary proceedings before the Hon'ble High Court. As such, this Contempt Notice of Motion taken out by the plaintiff is not maintainable.

12. In the light of above discussion, I answer Point No. 1 in the negative. In view thereof, present Contempt Notice of Motion deserves to be dismissed. Hence, I proceed to pass following order:-

ORDER

Contempt Notice of Motion No. 3803 of 2013 is dismissed.”

5] However, this reasoning is unsustainable since the trial Court, had initially declined to grant relief of injunction. Therefore, the appellant instituted an Appeal from Order no. 1834 of 2012. By order dated 21 February 2013, the appeal was disposed of and certain interim orders as specified therein, came to be made. The circumstance that interim relief was granted by this court in Appeal From Order, does not mean that an application alleging breach and urging action under Order XXXIX Rule 2A of CPC is not

maintainable before the trial court. In fact, such application was very much maintainable and was required to be decided by the learned trial Judge on merits. This is a case of failure to exercise jurisdiction which is clearly vested in the learned trial Judge. On this short ground, the appeal is liable to be allowed.

6] Accordingly, the impugned order is set aside. The contempt notice of motion no. 3803 of 2013 is restored to the file of the learned trial Judge who is directed to dispose of the same on merits and in accordance with law.

7] It is made clear that this Court has not adverted to the merits of the matter and therefore, all contentions of all parties are specifically kept open.

8] In view of disposal of appeal, civil applications do not survive and are disposed of accordingly.

9] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)