

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.52 OF 2017

IN

LETTERS PATENT APPEAL NO.155 OF 2012

Dr. Arshita S. Toshniwal.] ... Applicant /
(Org. Respondent No.1)

Versus

Mr. Sandeep S. Toshniwal.] ... Respondent /
(Org. Appellant)

Mrs. Manjula Rao a/w Mrs. Neena Shah & Mr. Yashwardhan Tiwari
for Applicant.

Mrs. Taubon F. Irani for Respondent.

**CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.**

DATE :- 01 NOVEMBER, 2017

P. C. :-

1. The above Civil Application has been filed by the Applicant / original Respondent No.1 to the above Letters Patent Appeal. The reliefs which are sought in the above Civil Application are reproduced hereinunder for the sake of ready reference :-

“a. This Hon'ble Court be pleased to suitably modify
the Order dated 14th December, 2014 by

withdrawing restrictions imposed on the Applicant in para 13 of the said Order, in view of para 15 of the Consent Terms dated 29.4.2017.

- b. This Hon'ble Court be pleased to relieve Applicant from complying with undertaking given by Applicant by dated 17.12.2012 filed pursuant to the Order dated 14.12.2012, in view of the Consent terms.*
- c. That this Hon'ble Court be pleased to permit the Applicant to add the names of the two minor daughters namely Tania and Isha in the said apartment.*
- d. Any other relief deemed fit by this Hon'ble Court, in the interest of justice.”*

2. The genesis, for claiming the said reliefs lies in the order dated 14/12/2012 passed by a Division Bench of this Court [Mohit S. Shah, CJ (as his Lordship then was) and N. M. Jamdar, J]. By the said order dated 14/12/2012, the above Letters Patent Appeal came to be disposed of and directions as contained in para 13, and especially clause (i) thereof, is material and is reproduced hereinunder :-

“Respondent No.1 shall be permitted to withdraw an amount of Rs.4.21 crores with interest accrued thereon in the short term deposit upon respondent No.1 furnishing an undertaking by way of affidavit that after purchasing the flat from out of

the amounts to be withdrawn and with any further amount which respondent No.1 may contribute or the father of respondent No.1 may contribute, the flat will not be sold, disposed of, or otherwise encumbered, nor any third party rights will be created.”

Hence by the aforesaid clause, a restriction was placed on the applicant i.e. the respondent no.1 that she would not sell, dispose of, or otherwise encumber, nor any third party rights would be created in respect of the flat which would be purchased in terms of the said clause (i). A flat has accordingly been purchased being Flat No.21, 4th Floor, India House 2, Kemps Corner, Mumbai – 400 026. The said flat presently stands in the name of the applicant / respondent no.1.

3. The said order dated 14/12/2012 was carried to the Apex Court by the respondent – husband, Mr. Sandeep Toshniwal. However, the challenge in the Apex Court failed. The Apex Court, whilst dismissing the SLP by order dated 08/02/2013, observed that the orders passed by this Court are justified and therefore did not find any reason to interfere with the orders. However, the Apex Court granted opportunity to the petitioner to move appropriate application before the concerned forum.

4. The parties have, thereafter, filed Consent Terms in the Family Court, Mumbai, on 29/04/2017 pursuant to the settlement which was arrived at before the Judge Mediator Mr. S. K. Ganatra.

The Consent Terms were also tendered on the same day i.e. 29/04/2017. In the context of the reliefs sought by the Civil Application, para 15 of the Consent Terms is material and is reproduced hereinunder :-

“15. The Petitioner and the Respondent agree and undertake to jointly approach the Hon'ble High Court, before passing decree of divorce for requesting the Hon'ble Court to withdraw the restrictions imposed by the Hon'ble High Court vide Order dated 14.12.2012 on the Respondent with regard to the flat situated at 21, India House 2, 4th floor, Kemps Corner, Mumbai 400026 (“the said flat”). The Respondent agrees and undertakes to assure the Hon'ble High Court to add the name of both daughters in the said flat in lieu of the said restrictions imposed by the Hon'ble High Court. The Petitioner, in lieu of adding the children's names to the said flat, agrees and undertakes to unconditionally relinquish his claim, right title, and/or interest in the said flat situated at 21, India House 2, Kemps Corner, Mumbai 400026. All charges, if any, for adding the names of the daughters, Tania and Isha, in the afore-mentioned apartment shall be borne by the Respondent and same shall be reimburse from children's interest amount.”

Hence, the parties have arrived at an agreement that the restrictions which are imposed by the order dated 14/12/2012 passed by the Division Bench are required to be withdrawn. It is further recorded in the said para 15 that the applicant i.e. the original respondent, agrees and undertakes and assures this Court to add the names of both the daughters in the flat in lieu of the said restrictions imposed by this Court vide the said para 13 clause (i) of the said order dated 14/12/2012. The parties, vide clause 16, have also arrived at an agreement that the applicant herein i.e. the respondent in the Family Court, shall not sell, encumber, dispose of the said flat in any manner so as to affect the rights of the residence of the daughters. The petitions in the Family Court where the Consent Terms are filed, we are informed, are to come up tomorrow before the Family Court so as to ascertain the compliance of the Consent Terms.

5. In view of the Consent Terms filed by the parties which evidences the settlement arrived at between the parties, in our view, the restrictions imposed by para 13 clause (i) of the order dated 14/12/2012 would have to be withdrawn. The said clause (i) of para 13 would accordingly be required to be modified to the extent that the following would be required to be added :-

“However, the applicant / original respondent would be entitled to incorporate the names of the daughters Tania and Isha in the documents of title of the flat in question being Flat No.21, 4th Floor, India House 2, Kemps Corner, Mumbai - 400 026.”

Insofar as opening part of the said clause is concerned, the same has already been worked out and insofar as the concluding part of the said clause is concerned, the applicant has, in the Consent Terms, agreed vide clause 16 not to sell, encumber, dispose of the said flat in any manner so as to affect the right of residence of the daughters. Hence the opening as well as the concluding part of the said clause is not required to be modified or amended and the said clause 13 (i) of the order would stand modified to the extent of the addition to be made which we have reproduced hereinabove.

6. In view of the fact that the names of the daughters would be included in the title documents of the flat in question, the applicant would also stand relieved of the undertaking dated 17/12/2012, save and except the undertaking that she would not dispose of or otherwise encumber the flat which, obviously, would have to be construed in consonance with clause 16 of the Consent Terms.

7. The Civil Application is accordingly made absolute in terms of prayer clauses (a), (b) and (c).

8. The learned Counsel for parties would accordingly inform the Family Court of the instant order when the matter comes up tomorrow before it.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)