

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

**APPEAL FROM ORDER (ST) NO. 3989 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 3991 OF 2017**

Rajesh Chandrakant More ... Appellant.
Versus
Tushar Mahabal Shah & Anr. ... Respondents

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**WITH
APPEAL FROM ORDER (ST) NO. 6793 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 6794 OF 2017**

Tushar Mahabal Shah & Anr. ... Appellants
Versus
Rajesh Chandrakant More ... Respondent

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Mr. Manoj Mhatre for Appellant in Appeal from Order (St) No.3989 of 2017 & Respondent in Appeal from Order (St) No. 6793 of 2017.
Mr. Amardeep Bhattacharya for Respondents in Appeal from Order (St) No. 3989 of 2017 & Appellants in Appeal from Order (St) No. 6793 of 2017.

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CORAM : S.C.GUPTE, J.

DATE : 20 APRIL 2017

P.C. :

1. Heard learned Counsel for the parties.
2. These Appeals from Order challenge an order passed by the City Civil Court, Dindoshi, Mumbai in a notice of motion taken out in a specific performance suit. It is the case of the Plaintiff, who is the Appellant before this Court in Appeal from Order(Stamp) No.3989 of 2017 that Respondent No.2, who is the owner of the suit flat, entered into an MOU with him on

26 November 2015. Under this MOU, the suit flat was agreed to be sold to the original Plaintiff for a sum of Rs.55,55,000/-. It is the case of the Plaintiff that out of this consideration, a sum of Rs.20,00,000/- has already been paid by the Plaintiff to the vendor or to her account. It is an undisputed position that the trial court has found that the amount was in fact paid. The trial court, however, has refused to grant any interim relief and dismissed the Plaintiffs Notice of Motion, presumably on the ground that the signatures appearing on the respective MOUs relied on by the Plaintiff and the Defendants defer. The Trial Court has, in the premises, refused to believe the Plaintiff's case. At the same time, since it came to the conclusion that an amount of Rs.20,00,000/- was in fact paid by the Plaintiff to Defendants, it ordered the defendants to deposit that amount in Court. Both the Plaintiff and the Defendants have come in appeal before this Court by way of Appeals from Order. Whereas the Plaintiff is aggrieved by the first part of the order, the Defendant is aggrieved by the other part concerning deposit of Rs. 20,00,000/- .

3. In these facts, both Appeals deserve to be admitted. The matter requires consideration. Accordingly, both Appeals from Order are admitted.

4. Pending the hearing and final disposal of the Appeals from Order, there will be an interim injunction in terms of prayer clause(a) of Civil application (Stamp) No.3991 of 2017. The civil application is disposed of accordingly.

5. Since the impugned order is stayed, there is no need to pass any separate order on Civil Application (Stamp) No.6794 of 2017 taken out by the Defendants in their appeal, namely, Appeal from Order(Stamp) No. 6793 of 2017. Civil Application (Stamp) No.6794 of 2017 is disposed of accordingly.

(S.C. GUPTE, J.)