

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL (L) NO.383 OF 2017

Hitesh Narendra Rupani

.... Appellant

versus

Anil Budhrani & Ors.

... Respondents

.....

- Mr.Sahil Mahajan, Advocate for the Appellant.
- Mr.Nitin Gangal, Advocate for the Respondent Nos.1 and 2.
- Mr.Ram Mohite i/b. Mr.S.M. Shettigar, Advocate for Respondent No.3.
- Dr.M.S. Deshpande, OSD, Court Receiver with D.R. Shetty, Court Receiver, present.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 03rd NOVEMBER, 2017.**

P.C. :

1. The above Appeal has been filed challenging the order dated 12/09/2017 passed by a learned Single Judge of this Court (Coram : K.K. Tated, J.). By the said order the Notice of Motion came to be made absolute in terms of prayer clauses (b) and (c). The Court Receiver resultantly was directed to take formal possession of the flat from the Defendant No.3 or

whosoever is in possession. The Court Receiver was further directed to offer the Defendant No.3 to act as an agent of the Court Receiver on usual terms and conditions and on payment of royalty. The said order also provides for the eventuality, if the Defendant No.3 refuses the said offer within two months in which eventuality, the Court Receiver is to appoint the plaintiff as an agent of the Court Receiver on usual terms and conditions. The suit in question has been filed for possession of the property i.e. flat No.5 on the second floor of plot No.68 together with 1/3rd share in the suit flat in the Sindhi Immigrants Co-Op. Hsg. Society Ltd., Chembur, Mumbai – 400 071.

2. The case of the plaintiff is based on the Conveyance Deed executed by the Defendant No.1 in favour of the Plaintiff for a sum of Rs.60 lakhs. The said Conveyance Deed has been registered in the office of the Sub-Registrar on 04/04/2013. The Appellant herein i.e. the Defendant No.3 lays a claim on the basis of a Memorandum of Understanding dated 01/10/2017, by which the Defendant No.3 agreed to purchase the said flat

from the Defendant No.1 for the consideration of Rs.70 lakhs, out of which Rs.25,50,000/- were paid as an advance. In view of the fact that the Defendant No.1 has not handed over possession of the suit property, that the Plaintiff has filed the suit in question and in the said suit has filed the instant motion being Notice of Motion No.351/15 for the relief claimed therein. The case of Plaintiffs and the Defendant No.3 was tested on the touchstone of the respective documents on which they relied.

3. In so far as the Plaintiffs are concerned, as indicated above, the Plaintiffs are relying upon a registered conveyance deed dated 04/04/2013 whereas the Appellant relies on an unregistered document, which is an MOU. The learned Single Judge has also referred to the income tax returns filed by the Appellant i.e. the Defendant No.3 and the Respondent No.4 i.e. the Defendant No.1, wherein the transaction of the MOU dated 01/10/2017 has not been disclosed before the income tax authority. The learned Judge has further relied upon the income tax returns of the Defendant No.3, for the relevant assessment

years i.e. 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016, which show that the total income of the Defendant No.3 was not more than 3,50,000/-. The learned Single Judge has also adverted to the fact that the Respondent No.3 i.e. the Appellant herein has filed his own suit for specific performance of the MOU dated 01/10/2017 and for cancellation of the conveyance deed dated 04/04/2013 executed in favour of the Plaintiffs i.e. the Respondent Nos.1 and 2 herein. It is in the facts and circumstances as above that the learned Single Judge has deemed it appropriate to make the motion absolute in terms of prayer clauses (b) and (c) with directions to the Court Receiver as contained in the operative part of the impugned order. In our view, having regards to the facts as aforesaid, no case for interference in the Appellant jurisdiction of this Court is made out, the Appeal is accordingly dismissed.

4. In view of the dismissal of the Appeal, the Notice of Motion does not survive and to accordingly stand disposed of.

5. The Court Receiver is present in the Court. The possession of the flat in question has already been taken by the Court Receiver and that the further steps in compliance of the directions, would be taken in the meeting, which is convened on 08/11/2017.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)