

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 1646 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 2506 OF 2018
IN
APPEAL FROM ORDER (ST.) NO. 1646 OF 2018**

Shahnaz Ahmed Khakhu

...Appellant

Versus

Yunus Tar Mohammed Khakhu & Anr.

...Respondents

.....

Mr.Kaustubh Thipsay i/b. Mr.Asadali Mazgaonwala for the Appellant.
Mr. Khan Javed Akhtar for Respondent No.1.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 02, 2018**

P.C.:

1. This Appeal from Order is directed against the order dated 11.12.2017 passed by learned Judge, City Civil Court, Mumbai in Notice of Motion No. 3468 of 2017 in SC.Suit No. 2069 of 2017 thereby restraining the appellant/defendant no.1 from parking her car in front of the parking garage.

2. Respondent no.1/original plaintiff has filed the suit for family settlement, declaration and injunction against the appellant /defendant no.1 i.e. sister-in-law and other family members. By order dated 19.09.2017, the trial Court has directed the parties not to create third party interest in the suit property specially in respective portion which are in their possession. On 11.12.2017, the trial Court has granted interim relief in favour of the plaintiff/respondent no.1 and defendant no.1 is restrained from creating any hurdle in the in-grace and out-grace of the vehicle of the plaintiff in the garage, which is in his possession as per the family settlement. This particular order is the subject matter of this Appeal.

3. The learned Counsel for the appellant has submitted that the garage is fallen in the share and possession of the plaintiff is disputed. He has further submitted that in the said garage other articles are lying down and since last many years, the appellant/defendant no.1 is parking her car outside the garage. He has further submitted that the appellant is not causing any obstruction to in-grace and out-grace of the plaintiff in the garage.

4. The learned Counsel for respondent no.1 has submitted that the garage is in the society and according to him, it has come to his share and possession by way of family settlement. He has further submitted that respondent no.1 wants to park his car in the garage, but the appellant/defendant no.1 car is parked in the way. Hence, the entry and exist of the vehicle of the plaintiff from the garage is not possible.

5. The order is passed at interim stage. The appellant has been parking her vehicle in the garage. The garage is used for parking vehicle, as it is alleged that the garage is in possession of the plaintiff and as on today, *prima-facie*, if it is accepted, then respondent no.1/ plaintiff should get free access to the garage. If any vehicle parked outside the garage, then it will obstruct the access to the garage. The garage will be unusable for parking. Therefore, the order dated 11.12.2017 passed by the trial Court granting relief in terms of prayer clause (c) of the Notice of Motion cannot be faulted with. No interference is required in the order. Notice of Motion is fixed on 26.04.2018. The defendants to file their affidavit in reply and the plaintiff to file rejoinder, if any. The pleadings in the Notice of Motion are to be completed on or before 08.04.2018. The trial Court is

requested to endeavour to hear the Notice of Motion and decide it on or before 06.05.2018.

6. It is made clear that the statement of the learned Counsel for respondent no.1/plaintiff that the plaintiff will be parking his car inside the garage is accepted and, therefore, no vehicle is to be parked outside the garage and blocked the way of garage.

7. With this, Appeal from Order is disposed of.

8. In view of disposal of Appeal from Order, Civil Application does not survive, hence the same is also disposed of accordingly.

(MRIDULA BHATKAR, J.)