

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER ST. NO. 4050 OF 2018
WITH
CIVIL APPLICATION ST. NO. 4051 OF 2018
IN
APPEAL FROM ORDER ST. NO. 4050 OF 2018**

Velji Gala & Ors.

...Appellants

Versus

Anilkumar Yashodanand Dhingra & Ors.

...Respondents

.....

Mr. Vishal Kanade a/w. Mr. Anirudh Hanani, Ms. Manisha Virkhare,
Mr. Sachin Mahagarkar, Ms. Archana Karmarkar and Mr. Darshit
Shah i/b. Divya Shah Associates for the Appellants.

Mr. Sandesh Godse, Mr. Ganesh Gunjal a/w. Ms. Khushbu Marwadi
i/b. Vivek Patil and Associates for Respondent Nos. 1 and 2.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 16, 2018**

P.C.:

1. This Appeal is directed against the order dated 24th January, 2018 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Div., Dindoshi, Mumbai thereby rejecting the Notice of Motion No. 190 of 2018. The trial Court has raised issue whether the prayers made in the Notice of Motion and the attachment of the property i.e.,

suit flats are maintainable when the Suit is not filed for specific performance, but it is only for recovery of money.

2. The learned Counsel for the appellants/plaintiffs points out that there is an alternate prayer in the Notice of Motion in respect of payment of money i.e., Rs. 55,65,548/-. He submits that the fact of payment of this amount is not disputed. Under such circumstances, the trial Court should have been allowed the prayer. There is another issue in respect of leasehold right of the suit flats.

3. At this stage, it is not necessary to go into another issue. On query, the learned counsel for respondent nos. 1 and 2/ defendant nos.1 and 2 confirms that money was received by them, however, he clarifies that it was not received from plaintiff no.1, but it was received from plaintiff nos. 2 and 3.

4. It was argued by the learned counsel for the appellants that money was paid by plaintiff no.1 through plaintiff nos.2 and 3.

5. Be that as it may, the fact of payment of amount is not disputed and, therefore, even though if it is considered as money recovery

simplicitor suit, I direct respondent nos. 1 and 2 to deposit an amount of Rs. 25 lakhs with following breakup :-

- (i) Respondent nos. 1 and 2 are directed to deposit an amount of Rs. 10 lakhs on or before 5th March, 2018. Thereafter, an amount of Rs. 10 lakhs is to be deposited on or before 15th April, 2018 and the remaining amount of Rs. 5 lakhs is to be deposited on or before 31st May, 2018 in the trial Court. The amount is to be deposited in the fixed deposit in any nationalized bank.

6. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)