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

**APPEAL FROM ORDER (STAMP) NO. 5927 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO. 5930 OF 2018**

Susheel Somani	.. Appellant
Vs.	
Om Sadan Pvt. Ltd. & Ors.	.. Respondents

Mr. Karl Tamboly a/w. Mr. R. M. Jaykar I/b M/s. Jayakars & Associates for the Appellant.

Mr. Naval Chaudhary I/b Bhulia & Associates for Respondent Nos.2 & 4.

Mrs. Laxmi Mankar for Respondent No.5.

CORAM : K. K. SONAWANE, J.
DATE : 3rd AUGUST, 2018.

P. C. :

1. The appellant preferred the present appeal against the impugned order passed by the learned Trial Judge of City Civil Court, Greater Mumbai in Chamber Summons No. 1185 of 2017 in Suit No. 8491 of 1993 refusing to grant relief as below:

“(a) that this Hon'ble Court may be pleased to allow Plaintiff No.22 and Kumkum Somani to transfer their undivided share, right, title and interest in Flat No. 133, on 13th floor of Infinity Towers Building and Shares Nos.451 to 460, as per Share Certificate No.013 to the Respondent abovenamed.

(b) that this Hon'ble Court may be pleased to allow the Respondent to file an Undertaking in terms of the Draft annexed as Ex. D to the affidavit-in-support of Chamber Summons in this Hon'ble Court within 4 weeks from the order of transfer of Flat No. 133 from Plaintiff No.22 and Kumkum Somani to the Respondent.

(c) *that this Hon'ble Court may be pleased to allow Plaintiffs to amend the title of the Plaint and Vakalatnama as per Schedule annexed to the Chamber Summons within 4 weeks after the Respondent files Undertaking as mentioned in prayer (b) above.*

(d)

(e)”

2. The learned Counsel for the appellant submits that the appellant-original plaintiff No.22 in Suit No. 8491 of 1993 is the owner and in possession of the Flat No.133 on 13th floor in building known as “Infinity Towers” (earlier known as “Shree Om Sadan”). There was Notice of Motion No. 193 of 1993 filed in the Suit No. 8491 of 1993. It was disposed of by this Court (Coram : A. Y. Sakhare, J.) under order dated 04.09.1997 and the Committee of Receivers was appointed to take care for completion of construction of building at the costs of flat purchasers and to deliver the possession of the flats to them upon certain terms and conditions. There was also mandate that the flat purchasers should not alienate, transfer or create any third party rights in their respective flats without prior permission of the Court. Pursuant to the directions in Notice of Motion dated 04.09.1997, the appellant-plaintiff joined as plaintiff No.22 in the suit. He has also filed affidavit and undertaking to vacate the premises in case of any contingency arises in the suit. Moreover, the appellant-plaintiff also furnished undertaking that he would not alienate, transfer or create any third party interest in the flat without prior permission of the Court.

3. Now, the appellant-plaintiff is intending to get transfer his flat No.133

located on 13th floor of the building in favour of respondent No.5-Suresh Deora. The appellant-plaintiff submits that respondent No.5-Suresh Deora is ready to substitute himself as plaintiff in the Suit No. 8491 of 1993 in place of appellant-plaintiff No.22 as well as he is ready to furnish the undertaking that he would abide the directions, if any, issued in the Suit No. 8491 of 1993 and also he is ready to deliver vacant possession of the flat in case any contingency arises in the suit.

4. Learned Counsel appearing for rest of the respondents-original defendants have no any objection to allow the appellant-plaintiff No.22 in the suit to get transfer his flat No.133 in favour of respondent No.5-Suresh Deora. The Committee of Court Receiver by order dated 22.07.2015 also made it confirmed that the appellant-plaintiff No.22 has already paid all the amount due to the Committee towards construction of so called building and the appellant has already been put in possession of flat No.133.

5. In view of aforesaid circumstances on record, I find that the impugned order passed by the learned Trial Judge is erroneous, imperfect and not in proper perspective of the facts and circumstances on record. The learned Trial Judge did not appreciate the directions issued by this Court (Coram : A. Y. Sakhare, J.) under order dated 04.09.1997 in Notice of Motion No. 193 of 1993 and committed error while rebuffing the relief prayed on behalf of appellant-original plaintiff. In the result, the appeal deserves to be allowed.

6. Accordingly, the appeal stands allowed. The impugned order

passed by the learned Trial Court dated 15.01.2018 is hereby set aside and quashed. The Chamber Summons No. 1185 of 2017 is hereby allowed in terms of prayer clauses (a), (b) and (c).

7. Accordingly, the appeal stands disposed of in above terms. No order as to costs. Inform the learned Trial Court accordingly.

8. In view of disposal of appeal, civil application does not survive and stands disposed of accordingly.

Arjun
Machhindra
Kadam

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by Arjun
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[K. K. SONAWANE, J.]