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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.292 OF 2016

WITH
CIVIL APPLICATION NO.376 OF 2016
IN
APPEAL FROM ORDER NO.292 OF 2016

Anand Hill View Resorts Pvt. Ltd.	...Appellant
V/s.	
Smt.Parul P. Shah & Ors.	...Respondents

Mr.H.S.S. Murthy i/b Mr.Abhishek Patil for the Appellant.

Mr.Rajesh Singh for the Respondent No.4.

Mr.Pratap Patil for the Respondent No.5.

CORAM : R.D. DHANUKA, J.
DATE : 4TH APRIL, 2018.

P.C. :-

1. By this appeal from order, the appellant (original plaintiff) has impugned the order dated 9th February, 2016 below Exhibit-5 in the civil suit filed by the appellant against the respondents. It is the case of the appellant that the appellant was always in possession of the suit property which is disputed by the respondent no.1.

2. It is common ground that at least today the appellant is in possession of the suit property. The respondent no.1 has filed a

separate civil suit (12 of 2018) *inter-alia* praying for an injunction against the appellant and in the alternate for restoration of possession, which according to the respondent no.1 has been illegally taken by the appellant during the pendency of this appeal.

3. There is another important event which has intervened during the pendency of these proceedings is that Rupee Co-operative Bank has already taken steps against the appellant for enforcement of a decree passed by the Court arising of the loan transaction between the said Bank and the appellant. The attachment is already levied on the suit property. During the pendency of these proceedings, the appellant and the said Bank have entered into an agreement for one time settlement. It is the case of the appellant that under the said one time settlement agreement, the appellant has paid substantial amount to the said Bank and has agreed to pay the balance amount on or before 17th November, 2018.

4. Learned counsel appearing for the respondent no.1 states that since the appellant has forcibly taken possession of the suit property from his client, his client would file a civil suit under section 6 of the Specific Performance Act against the appellant for restoration of possession. In view of these facts stated aforesaid, in my view interest of justice would be met with if the appellant, who is admittedly in possession of the property at least now in respect of the suit

property, is allowed to remain in possession, subject to the orders as may be passed in the separate suit under section 6 i.e. proposed to be filed by the respondent no.1 against the appellant. The appellant shall not create any third party rights in respect of the suit property till further orders as may be passed by the Civil Court in such suit. It is made clear that this Court has not granted any injunction insofar as one time settlement agreement entered into between the said Bank and the appellant is concerned. The existing attachment levied by the said Bank on the property of the appellant would continue subject to the settlement arrived at between the appellant and the said Bank.

5. Hearing of the Civil Suit No.19 of 2015 filed by the appellant before the Civil Judge, Senior Division, Panvel is expedited. The learned Civil Judge, Senior Division, Panvel to dispose of the proceedings expeditiously. Both parties are directed to co-operate with each other and also with the learned Civil Judge, Senior Division, Panvel to dispose of the proceedings expeditiously as directed and shall not seek any unnecessary adjournment.

6. It is for the respondent no.1 to apply for clubbing of both the suits before the same Court. All the contentions of both the parties in these proceedings are kept open and can be adjudicated in the pending suit filed by the appellant and in the suit proposed to be filed by the respondent no.1.

7. The appeal from order and the civil application are disposed of in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)