

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

**APPEAL FROM ORDER NO. 1233 OF 2012
WITH
CIVIL APPLICATION NO. 1672 OF 2012
IN
APPEAL FROM ORDER NO. 1233 OF 2012**

Dilip Chunilal Mistry & Anr.

.....Appellants

v/s.

Pratap Nanalal Mistry & Ors.

.....Respondents

Mr. Rahul Raut i/b. M/s. N.N. Vaishnawa & Co. for the applicants.

Mr. Sunil Patel for Respondent No.1.

Mr. Vipul Shukla for R.Nos.2 to 10.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th MARCH, 2018.

P.C. :-

1. The appellants herein has challenged the order dated 24th February, 2012 whereby the learned Judge, City Civil Court, Bombay has dismissed the Notice of Motion No.2509 of 2011 in Special Civil Suit No.1296 of 2009.

2. By order dated 09th April, 2013 this Court had granted ad-interim relief in terms of prayer clauses (a) and (b) in Civil

Application No.1672 of 2012 which read as under :-

“ (a) That pending the hearing and final disposal of the suit, the Defendant No.1, his agents, servants or anybody claiming through him, by a temporary Order of injunction restraining him from issuing rent receipt in his sole name to any tenant and/or collecting any rent from any of the tenants of the suit building being 62/64, Khetwadi Back Road, 11-13, Fakland Road, 2nd Cross Lane, Mumbai 400004 ;

(b) That the Defendant No.1 be ordered and directed to deposit all the rent recovered by him from the tenants of the suit building viz. 62/64, Khetwadi Back Road, 11-13, Fakland Road, 2nd Cross Lane, Mumbai 400 004, in the Joint Account No. 15962 with Bank of Maharashtra, Khetwadi Branch, Bombay forthwith ; ”

3. Mr. Rahul Raut, learned counsel for the applicant, Mr. Sunil Patel, learned counsel for respondent no.1 as well as Mr. Vipul Shukla, learned counsel for respondent no.2 to 10 have submitted that the hearing of the suit itself has reached at the fag end. Both the parties have conceded that the ad-interim relief granted by order dated 09th April, 2013 be continued till the disposal of the Special Civil Suit No.1296 of 2009.

4. The appeal from order is disposed of in the light of the statement made by the learned counsels for the respective parties. Ad-interim relief granted vide order dated 09th April, 2013 in Civil Application No. 1672 of 2012 shall remain in force till the disposal of Special Civil Suit No.1296 of 2009. The statement made by the respondent is restricted only to the litigation pending between the parties to this appeal.

5. It is made clear that this Court has not gone into the merits of the matter and that the appeal is disposed of mainly on the statement made by the learned counsels for the respective parties. The trial court shall decide the suit on its own merits. Appeal from Order No.1233 of 2012 alongwith Civil Application No.1672 of 2012 is accordingly disposed of in the light of the statement made by the learned counsel for the respective parties.

(SMT. ANUJA PRABHUDESSAI, J.)