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

**APPEAL FROM ORDER NO.606 OF 2018
WITH
CIVIL APPLICATION NO. 792 OF 2018
IN
APPEAL FROM ORDER NO.606 OF 2018**

Ashoksingh Jalimsingh Godavat ... Appellant
V/s.
Rixon Maben and ors ... Respondent.

Mr. Purushottam G. Chavan, for the appellant.
Mr. Javed Khan, for respondent Nos. 1 & 2.
Mr. Asit Singh, for respondent No.4.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondent.
2] This appeal takes an exception to the order dated 28.03.2018, passed by the City Civil Court, thereby partly allowing the Notice of Motion No.4369 in S.C. Suit No.2658 of 2017, thereby confirming the order of ad-interim relief granted on 22,12,2017, by the said Court and also appointing the Court Receiver directing him to take symbolic possession of the suit flat and further directing that defendant No.2- present appellant shall act as an agent of the Court Receiver.

3] Only two fold grievances are raised by learned counsel for

the appellant in respect of this order. Firstly, it is submitted that the said order passed is without notice to him. However, in this respect, learned counsel for respondent has pointed out the affidavit of service alongwith the acknowledgement receipt, received from the postal department stating that the notice was duly served on the appellant. In addition to it, he has also pointed that the appellant has admitted before the trial Court that he has duly received the said notice. Therefore, that grievance no more survives.

4] It is submitted that the appellant has no grievance about the appointment of Court Receiver. However, the grievance is against the directions given to the appellant to deposit amount of Rs.20,000/- every month with the Court receiver during the pendency of the suit and also to pay maintenance and other charges in respect of the said flat till disposal of the suit. It is submitted that when the appellant has already paid the entire amount of consideration of the suit flat, at the time of execution of registered agreement of sale in the year 2013, then directing the appellant to deposit amount of Rs.20,000/- per month, during pendency of the suit, will act onerous and appellant will not be able to comply with the said order.

5] It is pertinent to note that the trial Court has also directed the said amount to be deposited in any nationalized bank, and it would be subject to the outcome of the decision of the suit. If

ultimately the appellant succeeds in the suit, he is entitled to get back the said amount.

6] Moreover, the controversy involved in the present suit shows that the agreement of sale was executed in favour of respondent/plaintiff in the year 2007 itself, on the basis of Power of Attorney executed in the name of respondent No.1. The sale agreement executed in favour of the appellant is of the year 2013. In view thereof, on merits also, this Court is not inclined to interfere in the impugned order passed by the trial Court.

7] The appeal therefore, holds no merit. Hence, stands dismissed.

8] In view of dismissal of Appeal itself, pending civil Application therein no more survives and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]