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

**APPEAL FROM ORDER No. 965 OF 2016
WITH
CIVIL APPLICATION No. 1209 OF 2016**

M/s. Thakkar Builders & Developers ... Appellant
Vs.
Bimla Pannalal Gunecha ... Respondent

Mr. Rajesh Kachare i/b Ameet A. Palkar, for the Appellant.
None for the Respondent .

CORAM : V. M. DESHPANDE, J.
DATE : JULY 16, 2018

PC :-

. Heard learned counsel for the appellant who challenges the order passed by the learned Ad-hoc Judge, City Civil Court, Borivali District, Dindoshi, Mumbai dated 20/6/2016 in Notice of Motion No.437/2013 in S.C. Suit No.418/2013. By the impugned order the Court below has allowed the Notice of Motion filed on behalf of the respondent-plaintiff and the appellants were temporarily restrained from alienating or creating third party interest in the suit flat No.301 ad measuring 910 sq. ft. carpet area on the 3rd floor of

the building, Gokul heights at CRS No.148, 148/1 to 4, 218, 218/1 to 28, Village Malad(N), Taluka Borivali, Mumbai Upnagar Zilha, at Iraniwadi Hamukalani Cross Road No.4, Kandivali (W), Mumbai-67 till disposal of the suit.

2. Mr.Kachare, Learned counsel for the appellant states that respondent/plaintiff has paid only Rs.20 Lakhs out of total consideration of Rs.57,28,500/-. He submits that the appellants are ready to deposit Rs.20 Lakhs in the Court. However, it is harsh on the part of the Court below to grant injunction against the appellant restraining them from alienating or creating third party rights in the suit flat.

3. It is admitted position that the respondent-plaintiff has paid more than 20% of the agreed amount as per section 4 of Maharashtra Ownership of Flats Act. Further the suit is for specific performance of contract. In that view of the matter, when the respondent/plaintiff has parted substantial amount and if ultimately the Trial Court decides in favour of the respondent/plaintiff, in that event the injunction granted against the appellant will not create any

prejudice against the builder. Hence, appeal is rejected and disposed of. Civil Application is also disposed of.

[V. M. DESHPANDE, J.]