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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.32662 OF 2017
WITH
CIVIL APPLICATION NO.3776 OF 2017
WITH
CIVIL APPLICATION NO.3779 OF 2017

Gaaurav Nalinkant Bhadreshwara ... Appellant
V/s.
Natwarlal Manilal
Doshi and ors ... Respondents

Mr. Piyush M. Shah, for the appellant.
Ms. Sulabha Arun Dhamale, for respondent No.3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8st OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondents.

2] This Appeal is preferred against the judgment and decree dated 28th September, 2016, passed by the City Civil Court, in S.C.Suit NO.827 of 2008.

3] The said suit was filed by the respondents herein, in which the appellant/defendant has appeared before the trial Court and filed written statement on record. Thereafter, did not bother to take care of the pending suit and as a result thereof, the suit came to be decreed with declaration that the Memorandum of Understanding dated

15.11.2007, is valid, subsisting and binding on the parties and plaintiff is entitled for decree of specific performance of MOU Exh.10. Accordingly, the plaintiff was directed to deposit the balance consideration amount of Rs.54,83,105/- within one month in the Court and after depositing of the said amount, defendant No.1 was to execute the sale deed in favour of plaintiffs, pursuant to the Memorandum of Understanding dated 15.11.2007 and was also to hand over the vacant and peaceful possession of the suit flat to plaintiffs within three months.

4] It is a matter of record that in pursuance of the decree, respondent plaintiff has filed execution proceeding and in the said execution proceeding, again despite notice, appellant failed to remain present. As a result thereof, in the execution of the decree, the sale deed came to be executed by the appointment of the Officer of Court, and the possession is also delivered to respondent. Thus, the decree already stands executed and satisfied.

5] At this stage, along-with the application for condonation of delay, present appeal is filed, contending inter alia that the advocate of the appellant did not inform the appellant, as a result, the suit came to be decided in his absence.

6] However, in this respect, learned counsel for respondent has brought to the notice of this Court the Roznama of the trial Court

dated 15.4.2014, which shows that Advocate for plaintiff/respondent present and the advocate for appellant/defendant were very much present, when the matter was kept for framing of issues.

7] Even after decree was passed, in the execution proceeding also, notice of the same was given to the appellant. Despite that, he remained absent and as a result the execution was proceeded further. As per order passed by the executing court and as can be seen from the Roznama dated 7.1.2017, the appellant was very much present.

8] In such situation, merely putting the entire blame on the advocate cannot be justified on the part of the appellant for allowing the trial Court to pass exparte decree. If the appellant was really interested in the subject matter and if he was having several grievances about the said Memorandum of Understanding, the least expected from him was to remain present in the trial Court and to be diligent in making enquiry with his advocate about the progress of the suit. The appellant has not at all taken that much care. There are no sufficient details as to why appellant remained absent after engaging the advocate. Under these circumstances, after the execution of the decree, one cannot seek to set aside the exparte judgment and order, especially when the plaintiff had deposited an amount of Rs.54,83,105/-, The appeal filed at such a belated stage cannot be entertained and therefore, stands dismissed.

9] In view of dismissal of Appeal, pending Civil Applications therein no more survive and they are disposed off accordingly.

10] At this stage, learned counsel for the appellant seeks extension of the ad-interim order passed by this Court restraining respondent from creating third party interest in the suit flat. The said order was passed only during pendency of this appeal. In view thereof, the said order cannot be extended. The request is rejected.

11] Learned counsel for appellant seeks stay to the execution of order passed by this Court. Considering that nothing now remained to be executed as such, therefore, no question of granting stay. Hence this request also stands rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]