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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

APPEAL (L) NO.13 OF 2018

IN

NOTICE OF MOTION NO.789 OF 2013

IN

SUIT NO.2470 OF 1994

WITH

NOTICE OF MOTION (L) NO.10 OF 2018

Divyakant Ranjitsinh Khatau

..Appellant.

V/s.

Mrs.Krishnabai Abhay Khatau (since
deceased) through LRs. & Ors.

..Respondents.

Mr.Abhinav Chandrachud with Mr.Mehul Shah and Ms.Snehal
Dukhale for the applicant / appellant.

Mr.Ravi Kadam, Senior Advocate with Dr.Birendra Saraf,
Mr.Ranjeev Carvalho i/b. N.N. Amin & Co. for respondent No.1(D).

Mr.Mehul Rathod for respondent No.2.

Mr.Shiraz Rustomjee with Mr.Jai Chhabriya, Mr.Aditya N.Raut i/b.
Desai & Desai Carimjee & Mulla for respondent Nos.1(b), (c) and
(g).

Mr.Vishal Kanade with Mr.Vishesh Malvia, Ms.Khusbhoo Deshmukh
i/b. M/s. Federal & Rashmikant for respondent No.6.

Ms.Mudhulika Murthy i/b. Vashi & Vashi for respondent Nos.10 &
11.

Mr.Sangram Singh Yadav for respondent Nos.14 & 17.

**CORAM: NARESH H.PATIL AND
NITIN W.SAMBRE, JJ.**

DATE : JANUARY 22, 2018

PC.:-

1. The challenge is to order dated 14/12/2017 passed by the learned Single Judge in Notice of Motion No. 789 of 2013 in Suit No. 2470 of 1994.

2. The counsel appearing for the appellant submits that the learned Single Judge (Coram : S. S. Nijjar, J.) made the Notice of Motion No.2391 of 1997 absolute in terms of prayer clauses (a), except bracketed portion, and (b) by an order dated 30/01/1999. the said order is annexed at page 16 of the paper-book.

3. Our attention is also invited to an order passed by the learned Single Judge of this Court (Coram: D. B. Bhosale,J.) on April 17, 2008 in Arbitration Petition No. 4 of 1986, which reads as under :-

“1. Heard learned counsel for the parties for quite some time.

2. Learned counsel for the parties state that the parties even now are ready to accept and act on the terms of a Memorandum of Understanding dated 12th July,

1984. After hearing the learned counsel for the parties, prima facie I find that a sub division of the property in terms of the said Memorandum of Understanding since been not done is creating difficulties for the parties to the suit in putting an end to the disputes and/or acting on the terms of the Memorandum of Understanding. In view thereof, the learned counsel for the parties, except the learned counsel for the Respondent No. 8, have agreed to approach the Corporation seeking sub division of the property bearing C.S. No. 237 of Malabar Hill Division, being subject property of Exhibit "A" and the Memorandum of Understanding dated 12th July, 1984. They have filed Consent Minutes of Order dated 17th April, 2008 duly signed by the learned advocates on record for the parties, except the learned advocate for the Respondent No.8. The Consent Minutes of Order is taken on record and marked "X" for identification. Order in terms of the Consent Minutes of Order.

3. It is needless to mention that this Order is passed without prejudice to the rights and contentions of the Respondent No. 8.

4. Arbitration Petition to come up for hearing after twelve weeks.

5. Parties to act on an authenticated copy of this Order."

4. The learned counsel for the appellant submits that the defendants / respondents filed an application to the Corporation for division of the subject property. They are likely to create third party interest which would be contrary to the interim orders passed by this Court. Such a division is not permissible under

section 85 of the Maharashtra Land Revenue Code, 1966. The learned counsel for the appellant prays that the respondents be restrained from pressing the application for division of the property.

5. The learned counsel appearing for the respondents submitted that the respondents were permitted to deal with the property. Accordingly, an application was made for division of the subject property which would not defeat the purpose of filing of the suit nor it would violate orders passed by this Court. Assuming that the suit is decreed, the plaintiff would still be in a position to execute the decree. The learned counsel referred to the relevant portion of the order passed by the learned Single Judge. The learned counsel prays for dismissing the Notice of Motion.

6. The learned counsel appearing for respondents submitted that appellant was aware of the proceedings before the arbitrator. An agreement was reached between the parties regarding making division of the subject property. There was a mutual agreement between the defendants *inter se* which was

arrived at near about five years back. For the reasons best known to the appellant, he did not raise any objection regarding making an application for division of the property. The Counsel submits that even if the division takes place, the appellant is not prejudiced in any way. The division will be subject to the final outcome of the Suit. The Counsel placed reliance on the order passed by the Corporation. We have perused the said order. Conditions Nos.3,19 and 22 of the order reads as under:

- “3) *That the land within the regular line of road in our holding shall be kept open unbuilt upon and shall be handed over the Municipal Corporation duly constructed and its ownership shall be duly transferred in the name of Municipal Corporation of Greater Mumbai and the floor space index of the setback land will be utilised as per the prevailing D.C. Regulations.*
- 19) *That the plot shown as 20% R.G. Shall not be sold / leased or otherwise disposed of after developing the land and the same shall be handed over to Society / Federation of Societies.*
- 22) *That these terms and conditions of the layout-cum-amalgamation shall be binding not only on us for the time being but also on our heirs, executors, administrator, assignees and every person deriving right title and interest through or under us. ”*

7. We have perused the record placed before us, considered the submissions advanced. We find that appellant is

raising objection to the proposal submitted by the defendant for making a division of the said property. The Corporation had passed conditional order permitting such divisions. Some of the contentions are incorporated as above. The Suit is still pending. There are interim reliefs passed which are still operating in the Suit. The defendants have arrived at Memorandum of Understanding. The plaintiff was not party to the said Memorandum of Understanding.

8. The Counsel appearing for the appellant submits that setback area would be handed over to the Corporation, which would amount to creating 3rd party interest in the property and so it would be contrary to the interim orders passed earlier.

9. We find that the condition imposed by the Corporation in respect of the application for division of the property would be binding on all the parties including the plaintiff too. Therefore, there is a reason for the plaintiff to show concern on the same. We observe that division of the subject property if carried out in accordance with the terms and conditions set out by the Corporation will not affect in any manner the rights of the

appellant-plaintiff in the pending suit. The parties to the Suit shall be bound by the final outcome of the Suit.

10. The learned Single Judge has considered the relevant factors and attending circumstances while granting interim-relief.

11. The view adopted by the learned Single Judge is reasonable and possible view. In the facts, we are not inclined to interfere with the reasoning adopted by the learned Single Judge.

12. It is clarified that this Court has not restrained the defendants or Mumbai Municipal Corporation from taking steps in accordance with the proposal of division as permitted by the Corporation on certain terms and conditions.

13. With the aforesaid observations, the appeal stands dismissed.

14. Notice of Motion (L) No.10 of 2018 does not survive and stands disposed of accordingly.

(NITIN W.SAMBRE, J.)

(NARESH H.PATIL, J.)