

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

**APPEAL FROM ORDER NO. 323 OF 2018
WITH
CIVIL APPLICATION NO. 423 OF 2018**

Anil Govindprasad Lohia	...	Appellant
V/s.		
Kishore Kisandas Asarpota	...	Respondent

Ms.Pooja Batra i/b. Ms.Nilam Pawar for Appellant.

CORAM : A.S. GADKARI, J.

DATE : 17th December 2019.

PC. :

1] By the present Appeal, the appellant has impugned Order dated 31st January 2017 thereby refusing to continue with the earlier Order passed in the said proceedings.

The record reveals that, on 5th January 2016, the appellant-original plaintiff tendered across the bar registered Notice of Motion No.3396 of 2015 before the Trial Court. That the defendant who was present in the Court had made a statement that, he will not create third party interest in the suit premises. The roznama produced by the appellant indicates that, the said statement was continued from time to time and on 31st January 2017 by the

impugned Order the Trial Court has refused to continue with the said statement on the ground that, the agreement in question pertaining to the suit flat is not a registered document.

2] The record further reveals that, by an Order dated 3rd February 2017, this Court has restrained the respondent/original defendant from creating any third party rights in respect of the suit flat till the returnable date of the present appeal. The said Order is in force till today. This Court had made it clear that, pendency of the present appeal cannot be treated as hindrance from proceeding to decide the Notice of Motion in accordance with law and on its own merits.

Learned counsel for the appellant, on instructions, submitted that, the said Notice of Motion No.3396 of 2015 is now ripened for hearing.

3] In view thereof, during the pendency of Notice of Motion No.3396 of 2015, the ad-interim relief granted by Order dated 3rd February 2017 to remain in force i.e. the respondent is restrained from creating any third party rights in respect of the suit flat during the pendency of the said Motion.

4] Appeal is disposed off in the aforesaid terms.

5] In view of disposal of the Appeal, nothing survives in the Civil Application and is accordingly disposed off.

[A.S. GADKARI, J.]