

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Appeal from Order (ST) NO.28838/2018

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|-----------------------------------------------------------------------------------------------------------|----------------------------|
| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders. |
| Mr. S. M. Suryavanshi for the Appellant<br>Mr. Saurabh S. Mhatre h/f. Jagannath for the Respondent        |                            |

**CORAM : K.K.TATED, J.**  
**DATED : APRIL, 8, 2019**

**P.C.**

1 Heard. By this Appeal from Order, the Appellant - Plaintiff challenges the order dated 15.09.2018 passed by the Bombay City Civil Court refusing to grant any ad-interim relief in favour of the Appellant - Plaintiff.

2 It is the case of the Appellant that he has filed S.C.Suit No.2678/2018 for specific performance of contract, declaration and injunction u/s.12 and 38 of the Specific Relief Act, 1963 in respect of Shop admeasuirng 10 x 22 sq ft (220 sq.ft.) carpet area on ground floor situated Shop No.9, admeasuring 445 sq.ft. carpet area (ground and first floor) at Chawl No.4,

Rajput Chawl, Vakola Military Outpost, Santacruz - East, Mumbai - 400055. He further submits that the Plaintiff has paid the entire consideration to the Defendant but the Defendant has failed and neglected to execute the registered sale deed in his favour. He further submits that the Defendant has also handed over vacant and peaceful possession of the property to him. In support of his contention, the learned counsel for the Plaintiff relies on an SMS exchanged between the parties which are at page 42 and 43 of the Appeal from Order. He further submits that if the possession of the suit premises is not protected the Respondent may disturb the same and then nothing will remain in the present proceedings. He further submits that the Trial Court has failed to consider these facts and refused to grant any ad-interim relief without hearing the other side.

3 It is to be noted that in the present proceedings there is no agreement for sale between the Plaintiff and the Defendant in respect of the suit premises. There are only bare words of the Plaintiff to show that he paid entire consideration to the Defendant.

He has also relied on bank statement to that effect. He relies on receipt dated 13.03.2018 page 27 of the Appeal from Order. Bare reading of the copy of the plaint and all these documents show that the Defendant has handed over vacant and peaceful possession of the property to the Plaintiff . In any case, the Notice of Motion is pending for hearing on merits. Therefore, there is no question of entertaining the present Appeal from Order at this stage.

4 Hence, following order is passed:

- a. The Appeal from Order and the Civil Application stand dismissed.
- b. It is made clear that the Trial Court to decide the pending Notice of Motion on its own merits, without being influenced by this order, in accordance with law.

**(K.K.TATED, J.)**