

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

**APPEAL FROM ORDER NO. 97 OF 2019
WITH
CIVIL APPLICATION NO. 1038 OF 2018
IN
APPEAL FROM ORDER NO. 97 OF 2019**

Virendra Girdharilal Khandelwal

....Appellant

V/s.

Vipul Gopaldas Ashar & Anr.

....Respondents

Mr. Subhash A. Abhyankar for the appellant.

Mr. Deepak J. Lulia for respondent nos.1 and 2.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 20th FEBRUARY, 2019.**

P.C.:

. With consent, heard finally at the stage of admission.

2. The appellants herein have challenged the order dated 23/08/2018 passed in Notice of Motion No.718/2018 in S.C. Suit No.44/2018 whereby the learned Judge, City Civil Court, Borivli Division, Dindoshi, Mumbai has rejected the prayer of the appellant/plaintiff to appoint a receiver in respect of the said premises i.e. flat no.601 admeasuring 73 sq.mtrs.

3. The appellant who is the owner of the suit premises, had put the

respondent in possession of the suit premises. The case of the appellant/plaintiff is that the respondent has not executed the leave and license agreement as undertaken and that he is in illegal possession of the suit premises. He, therefore, filed a suit for recovery of possession and declaration that the letter of possession dated 15/02/2013 is fabricated, null and void.

4. The appellant also filed a Notice of Motion No.718/2018 seeking to restrain the respondent from creating third party rights in respect of the suit premises and further for appointment of receiver. The learned Judge, Bombay City Civil Court has partly allowed the application and has thereby restrained the respondent-defendant from creating third party rights. The learned Judge has rejected the prayer for appointment of receiver mainly on the ground that the respondent is in settled possession and that the appellant/plaintiff has not made out a case for appointment of receiver. Being aggrieved by rejection of the latter part of the order, the appellant has preferred this appeal.

5. Heard Mr. Subhash Abhyankar, the learned counsel for the appellant. He submits that the respondent herein had filed S.C. Suit No.1436/2013 for permanent injunction. By order dated 10/05/2013

in Notice of Motion No.1325/2013 in the said suit, the appellant/plaintiff was restrained from interfering, obstructing and dispossessing the respondent herein. He submits that the said order was subject to deposit of the balance consideration amount. He further submits that the respondent had challenged the said order in Appeal from Order No.635/2013 which has been dismissed by order dated 15/07/2013. He contends that since the respondent has not deposited the amount, the interim order passed in Notice of Motion No.1225/2013 in S.C. Suit No.1436/2013 stands vacated. The learned counsel for the appellant further submits that the appellant is the owner of the premises and that the appellant has not executed the document dated 15/02/2013 and that the said document is fabricated. He further submits that in the absence of any registered document, the respondent cannot take protection under Section 52 of Transfer of Property Act. He submits that the respondent has demolished the walls and further entered into illegal activities which necessitates appointment of receiver.

6. Mr. Deepak Lulia, the learned counsel for the respondent submits that the appellant had filed an application for appointment of receiver in S.C. Suit No.1434/2013. The said application has been dismissed by

order dated 18/09/2017. The appellant has filed another notice of motion for the same relief without challenging the previous order. He submits that the respondent has already deposited the amount i.e. remaining consideration before the Trial Court and hence, he is protected by the order dated 10/05/2013. He submits that the appellant has not made out a case for appointment of receiver and hence, he is not entitled for any relief as claimed.

7. Having perused the records and considered the submissions advanced by the learned counsels for the respective parties, in my considered view, the appellant/plaintiff has not made out any ground for appointment of receiver.

8. It is not in dispute that the respondent herein had filed a suit for permanent injunction seeking to restrain the appellant from interfering with the possession and that by order dated 10/05/2013, the Trial Court had restrained the appellant/plaintiff from interfering with the possession subject to deposit of the remaining consideration. The Appeal filed by the respondent challenging the said order has been dismissed by this Court by order dated 15/07/2013. Though the learned counsel for the appellant has submitted that the interim order

granted by the Trial Court in the suit filed by the respondent stands vacated for non deposit of the amount, there is no averment in the plaint that the respondent had failed to deposit the amount as per the order dated 10/05/2013. On the contrary, it is seen in paragraph 20 of the affidavit-in-reply, the respondents had denied that he has neglected to deposit the amount and had specifically stated that he has deposited an amount of Rs.49,00,000/- towards part consideration of the amount. The said statement has not been denied by the appellant by filing rejoinder. In the light of above, the appellant cannot be heard to say that the interim order granted in favour of the respondents vide order dated 10/05/2013 stands vacated.

9. It is also to be noted that the earlier application for appointment of receiver being Notice of Motion No.1528/2014 has been dismissed on merits by order dated 18/09/2017. Subsequent notice of motion has been filed on the same grounds. Furthermore, the grounds raised in the application are totally vague and no receiver can be appointed on such vague pleadings. Under the circumstances, the learned Trial Judge was perfectly justified in rejecting the prayer for appointment of receiver. The order is neither perverse nor illegal. Hence, the Appeal is dismissed.

10. Civil Application stands disposed of in view of dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)