

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 85 OF 2019
WITH
NOTICE OF MOTION NO. 624 OF 2019**

Sajid Ismail Haji Noor Mohammad ... Appellant/
original Defendant No.2

V/s.

Sohail Ismail Haji Noor Mohammad ... Respondents
and ors.

Mr. Sharan Jagtiani a/w. Mr. M. Khan i/b Sonal Doshi & Co.
for the Appellant/Applicant/Original Defendant No.2.
Mr. Ashish Gatagat for Respondent Nos.1 and 2/original
Plaintiffs.

**CORAM : AKIL KURESHI &
S.J.KATHAWALLA, JJ.
DATE : 19th SEPTEMBER, 2019.**

P.C.

1] This appeal is directed against the order of the learned Single Judge dated 28.6.2018 passed in Notice of Motion No.823 of 2018 in Suit No. 1978 of 2011. The motion had several prayers. The mainly prayers are prayer clauses (a) and (b), which read as under:

"a. That this Hon'ble Court be pleased to dismiss the present Suit;

b. That this Hon'ble Court be pleased to discharge, vary and/or set aside the Order dated 27th February, 2013 & 22nd August, 2013 passed in Notice of Motion 2435 of 2011 in Suit No.1978 of 2011;"

2] The remaining prayers are consequential in nature. The learned Single Judge dismissed the motion primarily holding that the appellant-original defendant No.2 had not made out any case for dismissal of the suit. Prayer clause (b) noted above was not decided. It is not clear whether it was not pressed by the Counsel for the appellant or for some other reason not gone into by the learned Single Judge. Be that as it may, there is no finding so far as the prayer clause (b) is concerned.

3] After some arguments, the learned Counsel for the appellant stated that he is not pressing the appeal in relation to prayer clause (a) in the notice of motion. In other words, he does not insist on the suit itself being dismissed on the grounds mentioned in the notice of motion. He however, submitted that the original plaintiffs had entered into a sale transaction in connection with the portion of the suit property in the year 2006. This was not disclosed in the suit or for a long time during pendency of the suit. Had this document and connected

developments been brought on record, the interim arrangement pending the suit for sharing of the rent proceeds, could have been resisted by the appellant. It is in this context, prayer clause (b) was made in the notice of motion.

4] As noted, prayer clause (b) is not dealt with by the learned Single Judge in the impugned order. We would permit the appellant to take out a fresh motion for the same prayer on such grounds as may be advised. To this formula even the Counsel for the original plaintiffs has no serious objection.

5] Under the circumstances, this appeal is disposed of after recording that the Counsel for the appellant has not pressed for dismissal of the suit. It would however be open for the appellant to file a fresh motion for modification of the interim arrangement as is referred to in the prayer clause (b) or any other prayers that may be found necessary in this connection. Such motion would be decided on its own merits uninfluenced by any of the observations that may have been made by the learned Single Judge in the impugned order having any bearing

on such prayers. All contentions of both sides in this respect are kept open.

6] Appeal is disposed of along with pending notice of motion, if any.

(S. J. KATHAWALLA, J.)

(AKIL KURESHI, J.)