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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

COMMERCIAL APPEAL (LODGING) NO.510 OF 2018  
IN  
CHAMBER SUMMONS NO.471 OF 2018  
IN  
EXECUTION APPLICATION NO.1022 OF 2018  
IN  
WRIT PETITION NO.922 OF 2015

WITH  
NOTICE OF MOTION (LODGING) NO.1229 OF 2018

AND

NOTICE OF MOTION (LODGING) NO.1230 OF 2018  
IN  
COMMERCIAL APPEAL (LODGING) NO.510 OF 2018  
IN  
CHAMBER SUMMONS NO.471 OF 2018  
IN  
EXECUTION APPLICATION NO.1022 OF 2018  
IN  
WRIT PETITION NO.922 OF 2015

|                                 |               |
|---------------------------------|---------------|
| Pravin Jain                     | ...Appellant  |
| V/s.                            |               |
| Advance Commercial Company Ltd. | ...Respondent |

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IN  
CHAMBER SUMMONS NO.471 OF 2018  
IN  
EXECUTION APPLICATION NO.1022 OF 2018  
IN  
WRIT PETITION NO.922 OF 2015

WITH  
NOTICE OF MOTION (LODGING) NO.1231 OF 2018

AND

NOTICE OF MOTION (LODGING) NO.1232 OF 2018  
IN  
COMMERCIAL APPEAL (LODGING) NO.511 OF 2018  
IN  
CHAMBER SUMMONS NO.471 OF 2018  
IN  
EXECUTION APPLICATION NO.1022 OF 2018  
IN  
WRIT PETITION NO.922 OF 2015

|                                 |               |
|---------------------------------|---------------|
| Pravin Jain                     | ...Appellant  |
| V/s.                            |               |
| Advance Commercial Company Ltd. | ...Respondent |

Mr.Ashok Chandiramani for the Appellant / Applicant in the Notices of Motion.

Ms.Mamta Sadh with Ms.Kainaz Irani and Mr.Narendra Devvansh I/b Ms.Anju Mishra for the Respondent.

Mr.D.R. Shetty, Court Receiver present.

**CORAM : PRADEEP NANDRAJOG, C.J. &**  
**N.M. JAMDAR, J.**  
**DATE : 15TH APRIL, 2019.**

**P.C. :-**

1. The request for an adjournment by the counsel for the appellant in two appeals is declined.
2. It all began when the respondent filed Writ Petition (Lodging) No.324 of 2015 in this Court. Noting the appellant was a

tenant on the first floor of a building known as “Saroosh Building”, 251, Dr.D.N. Road, Fort, Mumbai – 400 001 and a building was owned by the appellant, the Division Bench noted that a building required urgent repairs and in the proceedings before the Small Causes Court, on 28<sup>th</sup> May, 2014, an order was passed restraining the appellant from interfering with the repairs of the terrace of the building. The order passed by the Small Causes Court was challenged by the appellant before the Appeal Bench of the Small Causes Court. The appeal was allowed partly and the direction was that the appellant could take temporary measures by putting a thick polythene cloth or tarpaulin on the terrace or the portion open to sky. It was also directed that the beauty of the heritage building should not be disturbed. The respondent was aggrieved by the directions issued by the Appeal Court. It filed a writ petition making multiple prayers.

3. The Writ Court declined the request to delete the property from the heritage list but noted that the Municipal Corporation had directed the owner i.e. the appellant to take steps for preservation and conversation of the building. The Division Bench noted that as per the appellant, he had made an application to the Mumbai Heritage Conservation Committee for permission to carry out repairs. The Division Bench, by way of a temporary measures, directed the

Receiver to take charge limited to ensure that the tenanted portion of the property with the respondent was protected. The matter was finally resolved through Mediation resulting in Memorandum of Understanding dated 28<sup>th</sup> August, 2017 being executed. Under an Memorandum of Understanding for a consideration of ₹5.75 crores, the respondent had to vacate the tenanted premises. Needless to state that the appellant had to pay the agreed amount.

4. The respondent removed its belongings from the tenanted premises to ready itself to hand over vacant peaceful possession to the appellant, but did the appellant not come forward to pay a sum of ₹5.75 crores. The respondent sought execution of the Memorandum of Understanding which was accepted by the Court and needless to state took the stand that a settlement before a Mediator, irrespective of the origin of the proceedings, would be a decree and hence executable. On 6<sup>th</sup> June, 2018, noting aforesaid facts, learned single Judge granted time to the appellant to pay a sum of ₹5.75 crores, failing which the appellant was informed that the respondent would be entitled to possession of the first floor as an agent of the Receiver appointed by the Court without payment of royalty, security or rent till the deposit was made. The said order was passed in the afternoon session and on mention being made in the after lunch session, learned single Judge noted that the appellant stated that he was

unable to make payment atleast for another three months. Thus the direction was to execute the decree, requiring the Receiver to sell the property.

5. The challenge in Appeal (Lodging) No.511 of 2018 is to the said order dated 6<sup>th</sup> June, 2018. The memorandum of appeal questions appointment of a Receiver. The memorandum of appeal records that the appellant never caused any danger to the property. The vague and general grounds in appeal are suggested of the fact that the case of the appellant is that the tenant may continue to enjoy the tenanted property as per the original agreement and effect such repairs as would be permissible.

6. The appellant overlooks the fact that a consent decree, albeit in a writ, has been passed and it is too late for the appellant to turn the clock back.

7. The challenge in Appeal (Lodging) No.510 of 2018 is to the subsequent order dated 4<sup>th</sup> October, 2018 directing the Court Receiver, in terms of the agreement between the parties, to sell the subject property. The decree-holder has been held entitled to bid at the auction. In view of the consent decree passed in the writ proceedings, we find no infirmity even in the order dated 4<sup>th</sup> October, 2018 which is in the nature of execution of the consent decree.

8. Both the appeals are dismissed.

9. Notice of Motion (Lodging) Nos.1230 of 2018 and 1232 of 2018 are made absolute in terms of prayer clause (a).

10. In view of dismissal of both the appeals, Notice of Motion (Lodging) Nos.1229 of 2018 and 1231 of 2018 do not survive and are accordingly disposed of.

**(N.M. JAMDAR,J.)**

**(CHIEF JUSTICE)**