

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.284 OF 2021

Smt. Gayatri Devi Bhajanlal Kedia] ... Appellant/Orig.Defendant

Versus

Mrs. Laxmi Devi J. Bagarka] ... Respondent/Orig.Plaintiff

Mr. Anil Bajaj for Appellant.
Mr. Ram Singh for Respondent.

CORAM :- A. S. GADKARI, J.
DATE :- 28 SEPTEMBER, 2021

P. C. :-

1. At the outset, learned Advocate for Respondent raised a preliminary objection and submitted that, the present Appeal filed under Order XLIII Rule 1 of CPC is not maintainable, as the Order impugned herein dated 06/09/2021 passed below Exh.8 in A1 Appeal No.37 of 2020 in RAE Suit No.230/584 of 1995 does not fall in any of the sub-rules of Rule 1 of Order XLIII.

2. By the Order impugned herein, the Appellate Bench of the Small Causes Court, while granting stay to the impugned Judgment and Order passed by the trial Court, has also fixed interim compensation pertaining to the suit property. The impugned Order is therefore passed under Order XLI Rule 5 of CPC.

3. In view thereof, this Court finds that the preliminary objection raised by the learned Advocate for the Respondent is proper and is accordingly sustained.

4. The present Appeal is dismissed as not maintainable under Order XLIII of CPC, by reserving liberty to the Appellant / original Defendant to challenge Order dated 06/09/2021 passed below Exh.8 in A1 Appeal No.37 of 2020 in RAE Suit No.230/584 of 1995 by adopting appropriate legal remedy in that behalf.

(A. S. GADKARI, J.)