

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

***INTERIM APPLICATION NO.3036 OF 2022
IN
APPEAL FROM ORDER NO.187 OF 2021***

Allen Gerald D'Silva ...Applicant
Vs
Grace A. Pinto & Ors. ...Respondents
...

Mr. Sanjeev Sawant i/by Mr. Prashant D. Jadhav for the
Applicant/Appellant.
Mr. Ashok M. Saraogi for Respondents.

CORAM : SANDEEP K. SHINDE J.
DATE : MAY 4, 2022.

P.C. :

Heard Mr. Sawant, learned counsel for the applicant and
Mr. Saraogi, learned counsel for the respondents.

2 In Notice of Motion No.1200 of 2021 taken out by the
respondent/defendant no.1, in Short Cause Suit No.968 of 2021, the
learned trial Court vide order dated 30th June, 2021, restrained the
appellant/plaintiff, temporarily from disturbing the possession of the
respondent no.1 in premises described in Clause 7 of the operative

part of the order.

3 Feeling aggrieved by that order, Original Plaintiff has preferred the Appeal From Order No.187 of 2021. Pending Appeal, appellant has moved Interim Application No.3036 of 2022.

4 Mr. Sawant, learned counsel for the applicant/appellant, on instructions, submits that the Notice of Motion No.1200 of 2021 moved by the defendants in the suit, was not supported by affidavit. Submission is that the motion itself was not maintainable for want of affidavit and thus could not have been entertained by the trial Court. Mr. Sawant submitted that the Court was misdirected by the defendants, by relying on unaffirmed statement in support of Notice of Motion. On this count, he seeks, to ‘recall’ the order dated 30th January, 2021 passed in Notice of Motion No.1200 of 2021.

5 In consideration of the facts of the case and the submissions advanced, leave granted to appellant-plaintiff, to move appropriate application, seeking ‘recall’ of the order dated 30th June,

2021 passed in Notice of Motion No.1200 of 2021 on the grounds, as permissible in law. If such an application is moved, trial Court shall decide the same after hearing the parties and shall dispose of the same expeditiously.

6 That for the reasons stated above, Interim Application does not survive and it is disposed of.

7 All contentions of the respective parties are expressly kept open.

8 Reply filed by the respondents is taken on record.

(SANDEEP K. SHINDE, J.)