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

**APPEAL FROM ORDER NO. 920 OF 2022
WITH
INTERIM APPLICATION NO. 18306 OF 2022**

Basta Philomena Desa .. Appellant
vs.
Desmond Gabriel Desa and ors. .. Respondents

Mr. Hemen Thakkar i/b Ms. Anjali B. Mannapalli, for Appellant.
Mr. Dharmendra J. Damani, for Respondents No. 1 and 2.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 26, 2022

P.C. :

1. Heard learned counsel for the appellant. The order impugned is dated 17/03/2022 passed by the trial Court dismissing the notice of motion taken out by the original plaintiff for appointment of the court receiver. The suit premises in question is flat no. 13/B having built up area of 660 sq. ft. on the 4th floor of the building namely 'High Rise Co-operative Housing Society Ltd.', Village-Mandpeshwar, Borivali.

2. Learned counsel for the appellant submitted that the trial Court was not justified in rejecting the application for appointment of the court receiver. He submits that building in question is under redevelopment. The flat in question is of the ownership of the appellant-plaintiff and defendant no.1. In his submission due to harassment of defendant no.1 who is the son of plaintiff, the plaintiff is now forced to reside with the respondents no.3- daughter of plaintiff. In his submission, there is danger to the property being wasted and dealt with to the prejudice of the appellant. The respondent no. 1 is likely to deprive the appellant of the transit rent which the defendant no. 1 is entitled to after the agreement is entered into. Learned counsel submitted that all the conditions being required for appointment of the court receiver are satisfied in the present case.

3. Learned counsel for the respondents on the other hand does not dispute that the flat in question is of the ownership of the plaintiff as well as defendant no.1. In his submission, question for consideration before the trial Court that the flat exclusively belongs to the plaintiff is the

subject matter of adjudication before the trial Court. As of now the agreement stands in the name of the plaintiff and the defendant no. 1. Learned counsel submitted that the defendant no. 1 has never prohibited the plaintiff from access and user of the said flat, but it is on her own free will that the plaintiff prefers to stay away from the respondents.

4. There is another notice of motion no. 1562 of 2021 filed by the defendant no.1, which is not the subject matter of the present appeal from order. The said notice of motion was for permission to enter into and execute the agreement for redevelopment. The said notice of motion no. 1562 of 2021 is dismissed. As and when the challenge is made to the order passed in the said notice of motion, the same will be considered on its own merits.

5. Having gone through the order passed by the trial Court, I find that there is already an order passed by the trial Court restraining the defendant no.1 from creating any third party rights and/or dealing with the suit flat. Defendant no. 1 through his counsel states that he is not restraining or prohibiting the plaintiff from entering into the

said flat and reside there in any manner. Defendant no. 1 asserts that their mother will be taken good care of.

6. In this view of the matter, I do not see any reason to fault the order passed by the trial Court rejecting the notice of motion filed by the appellant refusing to appoint the court receiver as the interest of the appellant is adequately protected.

7. Appeal from order is disposed of subject to what is stated above. In view of disposal of the appeal, interim application also stands disposed of.

8. Liberty apply to the trial Court in case of any difficulty.

(M. S. KARNIK, J.)