

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

APPEAL FROM ORDER NO.1083 OF 2022

Tejas Devendra Mody

...Appellant

Versus

Devendra Dharamdas Mody

...Respondent

...

Mr. Ravindra Vishnu-Laxmi Sankpal i/b. Mr. R.V. Sankpal and
Associates for the Appellant.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 9th DECEMBER, 2022.

P. C. :-

1. With consent, the appeal is heard finally at the stage of admission.
2. This appeal assails order dated 17/02/2022 whereby the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai, dismissed the Notice of Motion No.2357 of 2021 filed by the aforesaid Appellant seeking to restrain the Respondent from alienating, transferring or creating third party rights in respect of the suit flat No.A-13, Neel Ashish Society, 92 J.P. Road, Andheir (West).
3. The Appellant is the son of the Respondent herein. The

records reveal that the Respondent filed Civil Suit No.1766 of 2010 against the Appellant, which was disposed of as per the consent terms filed by the parties. A perusal of the consent terms indicates that Respondent -father had agreed to purchase a flat in the name of the Appellant at Mira Road within a period of six months from the date of the consent terms for a total price of Rs.40,00,000/- and in the event Respondent was enable to find residential flat within the stipulated period, the Respondent had agreed to pay to the Appellant a sum of Rs.40,00,000/- before the expiry of agreed period of six months.

4. Clause 4 of the consent terms stipulates that the parties had agreed that in the event the Appellant herein decides to go abroad specifically to U.S.A., period of six months would start after his arrival and he should communicate his arrival to the Respondent in writing.

5. In terms of Clause 5 of the consent terms, the Respondent had agreed to permit the Appellant to reside in the suit premises till such time, the alternative accommodation was made available.

6. The Appellant herein filed Execution Application No.17 of 2014 to execute the decree and during the pendency of the said

execution application, he had sought to restrain the Respondent from creating third party rights in respect of the suit flat and further to direct the Respondent to deposit the money.

7. The learned Judge has observed that the execution proceedings are pending and remedy available to the Appellant is to execute the consent decree. It is stated that the Appellant as well as the Respondent are presently residing in U.S.A. Hence, clause 5 of the consent terms also cannot be invoked at this stage. No case is made out to interfere with the impugned order. Hence, the appeal is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)