

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

**APPEAL FROM ORDER NO.92 OF 2022
WITH
INTERIM APPLICATION NO.4373 OF 2019**

Kamal Mahendra Thacker	..Appellant
Versus	
Nalini Mahendra Thacker	..Respondent

**WITH
APPEAL FROM ORDER NO.93 OF 2022
WITH
INTERIM APPLICATION NO.4374 OF 2019**

Kamal Mahendra Thacker	..Appellant
Versus	
Nalini Mahendra Thacker	..Respondent

Mr. Ashutosh Kaushik i/b. Kaushik & Co. for the Appellant in both the AO.

Dr. Uday P. Warunjikar a/w. Adv. Hiren Mehta i/b. Adv. Mukesh V. Aiya for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATED : 21st NOVEMBER, 2022

P.C.:

1. In the suit for partition initiated by the respondent-mother against the appellant, the notice of motion was taken out for making out arrangements so as to facilitate the user of the properties which consists of flat nos. 1501 and 1502 so also the shop and parking space.

2. Vide order impugned dated 21/11/2019, the City Civil Court permitted the temporary arrangement as was prayed by respondent/plaintiff till the disposal of the suit that is by constructing a wall in between the flat nos. 1501 and 1502 so also the suit shop.
3. The order impugned is assailed on the ground that - (a) the appellant was not heard when the order impugned was passed and (b) the prayer for grant of re-hearing in the matter was rejected vide order impugned dated 16/12/2019 without considering the Rozanama. On the basis of Rozanama the contentions that the appellant was not heard is sought to be established and substantiated.
4. The further contention is, the suit property is a self acquired property of the appellant and having regard to the matrimonial differences Domestic Violence Act proceedings is already pending. As such, it is claimed that by way of interim arrangement the Court below has permitted the final relief in the matter as is prayed in the plaint.
5. The prayer is opposed by learned counsel for the respondent based on the findings recorded.
6. I have appreciated the submissions.

7. As regards, the contentions that the appellant was not heard by the Court while passing the order impugned dated 16/12/2019 is concerned, not only the order but also the Rozanama speaks of marking attendance of the applicant. Apart from above, the Rozanama is duly looked into and the fact remains that the counsel for the appellant was duly present when the said order was passed.

8. As such, it cannot be inferred that the appellant was not granted hearing when the order impugned came to be passed thereby directing appropriate arrangement in the matter.

9. As far as the other issue as regards grant of relief of making workable arrangements during the pendency of the suit is concerned, the fact remains that the sanctioned map depicts existence of two flat being flat nos. 1501 and 1502. Based on the sanctioned map the Court has directed to put wall in between the said flats so as to facilitate the user of the same by the appellant and the respondent/plaintiff.

10. The Court has made workable solution considering the nature of differences between the parties particularly having regard to the fact that the DV Act proceedings are already pending before the competent Court.

11. Apart from above, the ownership documents reflects that the parties to the suit are joint owners of the property.
12. That being so, no error could be noticed in the order impugned which warrants any interference in the appellate jurisdiction.
13. Both the appeals, as such, fails and stands disposed of.
14. Pending applications also stands disposed of.
15. The ad-interim order passed by this Court shall continue to operate for a period of four weeks from today.

(NITIN W. SAMBRE, J.)