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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 366 OF 2019**

**IN
NOTICE OF MOTION NO.238 OF 2019
IN
SUIT NO. 1097 OF 2015**

Shirish Girish Dikshit & Ors ...Appellants
Versus
Shivprakash Jani & Ors ...Respondents

**WITH
NOTICE OF MOTION NO.678 OF 2019
IN
APPEAL NO.366 OF 2019**

Shirish Girish Dikshit & Ors ...Applicants
Versus
Shivprakash Jani & Ors ...Respondents

Ms Veena C Khatri, for the Appellants.
Mr Kunal Bhanage, with Akshay Pawar, for Respondents No.1 to 3.
Mr Ishwar J Nankani, with Taniya D D'souza, i/b Nankani &
Associates, for Respondents Nos. 24 to 43.
Ms Jyoti Chavan, AGP, for Respondent-State.

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.**

DATED: 7th July 2022

PC:-

1. The Appeal is entirely infructuous. By the impugned order dated 4th March 2019, the learned Single Judge (RD Dhanuka J) allowed an application made by three third parties to the Suit. The suit itself was for specific performance of an MOU. By several previous orders, a Single Judge of this Court issued directions in regard to sale of flats and supervised criminal proceedings by the Economic Offences Wing. The result of this was that the bank accounts of the three applicants were frozen. It is because of this that they sought an order of this Court lifting the freezing of their bank accounts.

2. Having traced the history of the matter, the learned Single Judge directed the bank in question, Corporation Bank, Wadala Branch, to deposit an amount of Rs. 55 lacs from specified accounts of the Applicants. Upon that being done, the bank accounts in question were ordered to be released from the freezing orders. Those amounts were to be brought into Court and invested. The order made it clear that the deposit was without prejudice to the rights and contentions of the parties and, further, that the Court had not dealt with the rival claims between the Plaintiffs and the Defendants. All contentions of all parties regarding the rival claims were kept open.

3. The present Appeal is by the Defendants Nos. 1 to 3 to the Suit.

4. We are unable to see how these Defendants are prejudiced or affected by the impugned order. A total amount of Rs. 1.65 crores was brought into Court to the credit of this Suit. Not only that, but we find that the Plaintiffs and Defendants then entered into Consent Terms. This amount of Rs. 1.65 crores was also a part of the Consent Terms and particularly clauses 5 and 6 which are quoted below:

“5. The Plaintiffs and /or Defendant Nos. 4 to 23 shall be at liberty to approach the Hon’ble Bombay High Court to take all necessary steps, including formally applying to the Hon’ble Bombay High Court to take all necessary steps, including formally applying to the Hon’ble Bombay High Court for unconditional release of Rs 1.65 Crores (Rupees one crore and sixty five lakhs along with accrued interest thereon), which is lying deposited in the court pursuant to the order dated 4 March 2019 in Notice of Motion No-1526 of 2017 in the present Suit, without any security, in favour of Defendant Nos. 4 to 23.

6. Further save and except the rights acquired by the Defendant No 1 to 3 and averment made before the court in that regard to the deposited amount of Rs 1.65 Crores with the Hon’ble High Court, to facilitate the early release of the above sum of Rs 1.65 crores, Defendant No 1 to 3 shall indemnify before the Hon’ble High Court to the effect that if required Defendant No. 1 to 3 themselves will deposit the sum of Rs 1.65 Crores along with accrued interest to maintain their rights and claims made in their above mentioned averment before the Hon’ble High Court.”

5. Those Consent Terms were made an order of the Court on 5th August 2021 (by one of us sitting singly, GS Patel J). In fact the

Consent Terms were sought to be tendered earlier, but for some logistical reasons had to be deferred to 5th August 2021.

6. In light of this, the Suit itself having been disposed of, the entire Appeal is clearly infructuous. It is not possible to interfere with this order. Indeed, that would be illogical because it would mean a revival of the Motion in a disposed Suit and further, the amounts deposited and disbursed according to the Consent Terms would now have to be brought back and returned to the third party Applicants (who have not challenged the impugned order themselves).

7. In our view, the Appeal is without substance. It is dismissed. There will be no order as to costs.

8. The Notice of Motion in the Appeal does not survive and it is disposed of as infructuous.

(Madhav J. Jamdar, J)

(G. S. Patel, J)