

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

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
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**APPEAL FROM ORDER NO. 580 OF 2023
WITH
INTERIM APPLICATION NO. 13647 OF 2023**

Mohammed Shakeel Qureshi ...Appellant

Versus

M. M. Irani (since deceased) Mehroo M.

Irani (dead) Mahanaaz Roozbeh Aga ...Respondent

Mr. Abhinav Chandrachood, i/b K. N. Kandekar, for the
Appellant.

Mr. V. Y. Sanglikar, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 9th AUGUST, 2023

Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 5th April, 2023 passed by the learned Judge, City Civil Court, Mumbai, in Notice of Motion No.577 of 2022 in SC Suit No.217 of 2015, whereby the Notice of Motion taken out by the appellant – plaintiff to appoint a Court Receiver, declare the instruments, which have been executed by defendant No.3 after the order dated 9th April, 2018, as invalid, and make an entry of *lis pendense* in the property card of the suit property, came to be dismissed.

3. The appellant – plaintiff instituted a suit for specific performance of a Deed of Conveyance executed on 26th September, 2012. In the said suit, the plaintiff took out Notice of Motion No.865 of 2015 seeking injunctive reliefs during the pendency of the suit. On 19th April, 2018, the said Notice of Motion came to be disposed in view of the statement made on behalf of defendant No.3. The relevant part of the order reads as under:

“Defendant No.3 made statement that there is pendency of the suit, they will not create third party interest by transferring the ownership in the suit land and building except for change of tenants. The statement is accepted as undertaking D-3. On statement being accepted, LC for plaintiff not pressed the prayer Clause (a) and part prayer Clause (b) of Notice of Motion 865/15.

The Notice of Motion 865/15 in view of statement made stands disposed of, thereto, restraining D-3 not to create third party interest in the suit building regarding the ownership without permission of this Court.

Adjd for hearing on settlement of issues on 16.07.18.”

4. Alleging that defendant No.3 in breach of the aforesaid statement has transferred tenancy rights in respect of the subject matter of the suit, the plaintiff took out instant Notice of Motion No.577 of 2022. By the impugned order the learned Judge was persuaded to dismiss the Notice of Motion holding *inter alia* that the expression “except for change of tenants” was not restricted to “transmission” of tenancy in favour of the legal

heirs and was also amenable to an interpretation that defendant No.3 was allowed to transfer the tenancy.

5. The learned Counsel for the appellant submitted that though the expression, “except for change of tenants”, may be susceptible to interpretation in the manner indicated by the trial court yet in the contemplation of the plaintiff the said expression was used to denote, “transmission of tenancy” only. In the circumstances, the appellant – plaintiff be permitted to either revive the said Notice of Motion No.865 of 2015 or file a fresh Notice of Motion to henceforth restrain defendant No.3 from creating or transferring tenancy in respect of the subject matter of the suit.

6. The suit has been instituted in the year 2015. The Court is informed that the suit is posted for recording evidence of the plaintiff. Having regard to the nature of the suit, it may be expedient that the suit itself is decided expeditiously instead of reopening the issue of interim reliefs, at this stage.

7. The next scheduled date before the trial court is 19th August, 2023.

8. The defendant shall make a statement of admission and denial of the documents filed on behalf of the plaintiff on 19th August, 2023.

9. The plaintiff – appellant shall file affidavit in lieu of examination-in-chief within a period of four weeks from today.
10. The learned Judge, City Civil Court, is requested to make an endeavour to decide the suit as expeditiously as possible and, preferably, within a period of one year from 19th August, 2023.
11. In the meanwhile, if any fresh tenancies are created, the same shall abide the outcome of the suit.
12. Appeal stands disposed.
13. In view of disposal of the appeal, interim application does not survive and also stands disposed.

[N. J. JAMADAR, J.]