

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.644 OF 2023
WITH
INTERIM APPLICATION NO.14285 OF 2023
IN
APPEAL FROM ORDER NO.644 OF 2023

Shabana Khan

....Appellant/Applicant

V/S

Sabrun Nisha Khan

....Respondent

...

Mr. Deepak Chitnis i/b M/s. Deepak Chitnis Chiparikar & Company for
the Appellant/Applicant.

Mr. Sunil Tiwari for Respondent.

...

CORAM: SANDEEP V. MARNE, J.

DATE : AUGUST 23, 2023.

P.C.:

. By this Appeal, the Appellant has challenged order dated 6 May 2023 passed by the City Civil Court granting *ad interim* relief in terms of prayer clauses (a) to (c) of the Draft Notice of Motion. In effect the City Civil Court has restrained the Defendant from creating any third party rights in respect of the suit premises.

2 Mr. Chitnis, the learned Counsel appearing for the Appellant would submit that some of the suit properties have already been transferred by

the Appellant's husband during his life time. He would further submit that so far as the residential flat is concerned, the Appellant is occupying the same and that that is outstanding loan of Rs.20,00,000/- of Bank of India. He would further submit that the Bank has issued notice for recovery of loan under the provisions of section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. He would further submit that the Appellant may have to alienate one of the suit properties with a view to satisfy the said loan.

3 Mr. Chitnis further submits that by the order dated 6 May 2023 the City Civil Court has in fact disposed of the Notice of Motion.

4 Mr. Tiwari, the learned Counsel appearing for the Respondent also submits that the Notice of Motion has been disposed of by order dated 6 May 2023. I am unable to agree. The Court has merely granted *ad-interim* relief by order dated 6 May 2023. The City Civil Court has nowhere recorded that the Notice of Motion has been disposed of. In fact as on the date of passing of order dated 6 May 2023, the Notice of Motion was not even numbered. Therefore, it appears that the Notice of Motion is still pending and only an *ad interim* relief has been granted by the City Civil Court.

5 Mr. Chitnis submits that the Appellant has already filed Affidavit-in-Reply opposing the Notice of Motion.

6 Considering the above position, the present Appeal is accordingly disposed of with a request to the City Civil Court to decide the Notice of Motion in which *ad interim* order is passed on 6 May 2023 in an expeditious manner preferably within a period of four weeks from today.

7 While deciding the Notice of Motion, the City Civil Court shall not be influenced by any findings recorded in the *ad-interim* order dated 6 May 2023 and the Notice of Motion will be decided on its own merits. All the contentions of both the parties are kept open.

8 In view of the disposal of the Appeal, the Interim Application also stands disposed of. No order as to costs.

(SANDEEP V. MARNE, J.)

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2023.08.28
11:23:48
+0530