IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.912 OF 2022
WITH
INTERIM APPLICATION NO.18252 OF 2022
IN
APPEAL FROM ORDER NO.912 OF 2022
....

Shaikh Salim Khawaja ....Appellant/Applicant
Versus
Patel Idris Ismail &Ors ....Respondents
...

Mr. Pradeep Thorat a/w Ms. Aditi Naikare for the Appellant/Applicant.
Mr. Sunil Dubey i/b Ms. Pavitra Mishra for Respondent No.1.
Mr. Manoj Upadhyay for Respondent No.2.
Ms. Diksha Shetty i/b M/s. AAK Legal for Respondent No.3-Bank.

Idris Patel – Respondent No.1 – in person present in Court.
...

CORAM: SANDEEP V. MARNE, J.
DATE : DECEMBER 21, 2023.

P.C.:

1 The Appellant has filed the present Appeal to challenge the order dated 16 July 2022 passed by the learned Judge, City Civil Court at Dindoshi, Mumbai in Notice of Motion No.2064 of 2022 in S.C. Suit No.1540 of 2022 thereby refusing *ad-interim* relief.

2 The Appellant has filed the S.C. Suit No.1540 of 2022 for specific performance of the oral agreement for sale entered into between the

Plaintiff and the Defendant No.1 for sale of flat No.804, Sagar Heights, Vaishat Pada No.2, Near Malika Hotel, Kurar Village, Malad (East), Mumbai – 400 097 (hereinafter referred to as "suit flat" for sake of brevity). The Respondent No.1 has put the Appellant in possession of the suit flat vide a registered leave and license agreement dated 5 May 2018 and has received an amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) from the Appellant as and by way of security deposit.

3 The Respondent No.1 has mortgaged the suit flat in favour of the Respondent No.3-DCB Bank as security for repayment of the home loan and business loan sanctioned in the year 2017. The Respondent No.1 has executed an equitable mortgage in respect of the suit flat in favor of the Respondent No.3-Bank.

4 That in the meanwhile the Respondent No.1 has also executed a registered an agreement for sale dated 31 March 2021 in favour of the Respondent No.2- Ubaidullah Zafarullah Khan in respect of sale of the suit flat for a total consideration of Rs.60,00,000/- out of which an amount of Rs.10,00,000/- is paid to the Respondent No.1 by way of part consideration. The Respondent No.2 also claims to have paid a further sum of Rs.32,34,000/- to the Respondent No.1 or to the Respondent No.3-Bank on behalf of the Respondent No.1. The Respondent No.2 has also filed S.C. Suit No.2579 of 2023 against the Respondent No.1 before the City Civil Court at Dindoshi, Mumbai for specific performance of the agreement dated 31March 2021.

5 Further it is seen that on 14 March 2022 the Respondent No.3-Bank has declared the loan account of the Respondent No.1 as Non Performing Asset and has initiated proceedings against the Respondent No.1 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**). Accordingly, the Respondent No.3 has also issued notice under section 13(2) of the SARFAESI Act for taking possession of the suit flat. It is informed that as on date the outstanding amount due and payable by the Respondent No.1 to the Respondent No.3-Bank is to the tune of Rs.56,00,000/- (Rupees Fifty Six Lakhs only).

6 It is seen that the Respondent No.1 has received money from the Appellant and the Respondent No.2 for sale of the suit flat in their favour. The Respondent No.1 has also failed to pay the outstanding loan amount to the Respondent No.3-Bank.

7 The dispute involved in the present Appeal and S.C. Suit No.1540 of 2022 filed by the Appellant can be resolved by passing the following Order:

O R D E R

i) The Respondent No.2 is directed to pay the outstanding loan amount of Rs. 56,00,000/- (Rupees Fifty Six Lakhs only) to the Respondent No.3-Bank for and on behalf of the Respondent No.1 within a period of three months as undertaking to this Court.

ii) The Respondent No.2 is directed to pay the sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) to the Respondent No.3-Bank on or before 23 December 2023 as part payment of the amount mentioned in clause (i) above.

iii) The Respondent No.2 is directed to pay to the Appellant the sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) within a period of three months from the date of the present order as undertaking to this Court.

iv) The Appellant will continue to use and occupy the suit flat No.804, Sagar Heights, Vaishat Pada No.2, Near Malika Hotel, Kurar Village, Malad (East), Mumbai 400 097 without any interference from the Respondents till receipt of sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) from the Respondent No.2. That upon receipt of the amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) the Appellant shall handover the clear and vacant possession of the suit flat to the Respondent No.2.

v) The Respondent No.3-Bank upon receipt of the entire amount of Rs.56,00,000/- (Rupees Fifty Six Lakhs only) from the Respondent No.2 shall hand over the original title deeds in respect of the suit flat to the Respondent No.1 in presence of the Respondent No.2.

vi) The Respondent No.2 shall be at liberty to prosecute the S.C. Suit No.2579 of 2023 pending before the City Civil Court at Dindoshi, Mumbai against the Respondent No.1 for recovery of any excess amount paid to the Respondent No.1 over and above the agreed consideration.

vii) All contentions of Respondent Nos.1 and 2 in that regard are specifically kept open.

viii) The Appellant will enter into leave and license agreement with the Respondent No.2 for the interim period of three months in respect of the suit flat without payment of any license fees and with a condition that the amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) is given as and by way of security deposit by the Appellant and the Respondent No.2 will repay the said amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to the Appellant before seeking possession of the suit flat from the Appellant.

ix) The Respondent No.1 is ordered and directed to issue an authority letter in favour of Respondent No.2 thereby authorizing the Respondent No.2 to pay the outstanding loan on his behalf and the Respondent No.3Bank will act on such authority letter.

8 The Appeal from Order is disposed of in the above terms and there shall be no order as to costs.

9 In view of the disposal of the Appeal from Order, the Interim Application does not survive and the same is disposed of accordingly.

SUDARSHAN RAJALINGAM KATKAM

Digitally signed by SUDARSHAN RAJALINGAM KATKAM
Date: 2023.12.22 15:51:24 +0530

(SANDEEP V. MARNE, J.)