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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2704 OF 2021

IN

FIRST APPEAL NO.366 OF 2021

WITH

FIRST APPEAL NO.366 OF 2021

Harminster Singh Tarlok Singh Suri : Appellant/Applicant

Vs.

Tarlok Singh Hukumsingh Suri
(since deceased) Through LRs.

S. Amarpal Singh Suri & Ors. : Respondents

WITH

FIRST APPEAL NO.417 OF 2021

Harminster Singh Tarlok Singh Suri : Appellant

Vs.

Tarlok Singh Hukumsingh Suri
(since deceased) Through LRs.

Gurucharan Singh Suri S/o

Tarlok Singh Suri & Ors. : Respondents

Adv. Satyavan N. Vaishnav a/w Adv. Nupur J. Mukherjee, Adv. Armaan Grewal, Adv. Rahul Raut, Adv. Jasmine Sabharwal i/by M/s. N. N. Vaishnawa & Co. for the Appellant/Applicant.

Dr. Uday Warunjikar a/w Sumit Kate & Aditya Kharkar for the Respondent No.1(a) & 4.

CORAM : KISHORE C. SANT, J.

DATE : 30th JANUARY, 2024

PC. :

1. Heard the parties.
2. This Application is moved seeking restoration of the position as before 27th September, 2021. The share certificate standing in the name of the present Applicant came to be transferred in the name of Respondent by the co-operative society. It is submitted that till that date there was stay in operation as granted by the Trial Court while disposing of the Suit by way of Impugned Order. After transfer this Court had passed an order in the Civil Application on 5th October, 2021. This Court has already noted that the share certificate is transferred in the name of Respondent No.1(a).

Para 7 of the said order as under:

“7. In the light of the aforesaid developments in the intervening period, it would be expedient in the interest of justice to direct that the transfer of the share certificate in the name of respondent No.1A, shall be subject to the outcome of this appeal and the statement made on behalf of the plaintiff that no third party interest would be created in the suit property shall remain in operation till the next date.”

3. This Court finds that already a care is taken of the interest of the present Applicant. The transfer of share certificate is subject to outcome of this Appeal & the statement is also recorded of the learned Advocate that no third party interest would be created in the suit property.

The statement was only accepted till the next date i.e. 27th October, 2021.

4. Today learned Advocate for the Respondent Nos.1(a) and 4 makes a statement that the Respondent No.1(a) will not create any third party interest till disposal of the Appeal. This Court finds that this will take care of the interest of any kind.

5. Learned Advocate for the Applicant relied upon the Judgment in the case of *Tanushri Basu And Others Vs. Ishani Prasad Basu And Others*, reported in (2008) 4 Supreme Court Cases, at page 791. The Hon'ble Apex Court in para 23 has observed as under:

“23. It is not the law that a party to a suit during pendency thereof shall take law into his hands and dispossess the other co-sharer. If a party takes recourse to any contrivance to dispossess another, during pendency of the suit either in violation of the order of injunction or otherwise, the court indisputably will have jurisdiction to restore the parties back to the same position.”

6. He further relied upon the judgment in the case of *Samir Narain Bhojwani Vs. Aurora Properties And Investments And Another*, reported in (2018) 17 Supreme Court Cases, at page 203. Para 26 reads as under:

“26. The principle expounded in this decision has been consistently followed by this Court. It is well established that an interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in

circumstances which are clear and the prima facie material clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction.”

7. This Court finds that in the present case there is no apprehension of dispossession or change of position. In view of the statement that no third party interest is created, no prejudice will be caused to the Applicant.

8. In view of above this Court finds that the Application needs to be disposed of by accepting the statement made by the learned Advocate for Respondent Nos.1(a) & 4, that he shall not create any third party interest in the suit property till disposal of the appeal & the transfer of share certificate in favour of Respondent No.1(a) shall be subject to the outcome of this appeal. Both Appeals are admitted.

9. Looking to the age of the parties, appeals expedited.

(KISHORE C. SANT, J.)

Corrected pursuant to speaking to minutes of order dated 5th February, 2024.