

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1417 OF 2024
IN
FIRST APPEAL NO. 162 OF 2024

Anita Vidyadhar Haval

... Appellant/Applicant

Vs.

Shri. Baliram Pandurang Kavade And Ors.

... Respondents

Adv. Uday Warunjikar a/w Adv. Bhooshan Mandlik, a/w Adv. Sonali R.
Chavan a/w Adv. Shashank S. Patare, for the Applicant/Appellant.
Ms. Anushree Koparkar, for the Respondent Nos. 1, 2, 3(a), 3(d) & 6.

CORAM : KISHORE C. SANT, J.

DATE : 13th March, 2024

P.C.:-

1. Heard for sometime, it is the case of the Applicant that she had filed suit for partition and separate possession of the family properties. One of the properties of the joint family is mortgaged with Original Defendant No. 11 who happens to be a Bank and therefore the Bank is also added as a party.

2. The Bank filed an Application under Order 7 rule 11 for want of notice under Section 164 of the Maharashtra Co-Operative Housing Societies Act. The learned Trial Court held the prayers in the suit are in the nature of touching the business of the society and therefore notice under Section 164 was necessary. On that ground it is held that the suit against

the Original Defendant No. 11 is not maintainable and rejected the plaint. The learned Advocate submits that no relief is claimed against Original Defendant No. 11. It is only because one of the properties is mortgaged the Original Defendant No. 11 is added as a formal party. If the relief prayed in the suit are seen it no way shows that it is touching to the business of the Society. He submits that when the case is made out to prosecute the Appeal it is necessary to grant interim relief the points of that the trial Court had already allowed the Application Exhibit-9 restraining the Defendant Nos. 3(a) to 3(d) 6 from creating any third party interest of any nature. He thus submits that the case is made out to continue the said relief that in similar lines. This Court prima facie finds that the order passed by the Trial Court is not correct in view of the Judgment relied upon by the learned Advocate for the Applicant, *reported in (2018) 11 SCC 780 in the case of Sejal Glass Limited Vs. Navilan Merchants Private Limited decided on August 21, 2017*. This Court finds that a case is made out grant of interim relief is the following order:-

3. Issue notice to Respondents, returnable on 3rd April, 2024. Learned Advocate Ms. Anushree Koparkar, waives notice for the Respondent Nos. 1, 2, 3(a), 3(d) & 6.

4. Till the next date there shall be ad-interim relief continue in terms of prayer clause A, which reads thus:-

“A. Pending hearing and final disposal of the present second appeal,

this Hon'ble Court be pleased to restrain the Respondents herein by an Order of injunction from dealing with or disposing of or parting with possession or from creating any third party interest of any nature whatsoever in respect of suit properties as more particularly and specifically as mentioned in the paragraph 1 of the Plaint, either by themselves or through their agents, servants, representatives and relatives."

5. The learned Advocate for Respondents Ms. Koparkar, opposes the grant of ad-interim relief she has also filed affidavit-in-reply the Application is vehemently opposed stating that, infact the Respondent No. 1 has already executed gift deed in favour of Appellant and Respondent Nos. 5 and 6 and she is also a signatory to the said documents.
6. Ad-interim relief to continue till next date.
7. Stand over to 3rd April, 2024.

(KISHORE C. SANT, J.)

Note :- This Order is corrected as per Speaking to the Minutes of the Order dated 26th March, 2024.