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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 927 OF 2024
WITH
INTERIM APPLICATION NO. 16190 OF 2024
IN
APPEAL FROM ORDER NO. 927 OF 2024**

Ramesh Mangalchand Prekh and Anr ... Appellants/Applicants
vs.

M/s. Shamik Real Estate LLP and Ors ... Respondents

Mr. Ashok R. Pande a/w. Mr. Shobhit Shukla for
Appellants/Applicants.

Ms. Minal V. Chavan i/b. Mr. Virat M. Chavda for the Respondents.

CORAM : GAURI GODSE, J.

DATED : 3rd JANUARY 2025

ORDER:

1. Heard learned counsels for the parties. By consent appeal is taken up for final disposal. By this appeal, the plaintiffs challenge the refusal of the ad interim relief by the City Civil Court. The plaintiffs are claiming their rights in respect of the suit land and seeking directions for execution and registration of the agreement. The plaintiffs are relying upon the payment receipts towards the

payments made towards the entire consideration amount to defendant no.1.

2. Learned counsel for the appellants submits that the total consideration amount of Rs. 1.47 Crores is already paid to defendant no.1. He, therefore, submits that serious prejudice would be caused to the plaintiffs if defendants create third party rights in respect of the suit flat. Learned counsel for the appellants relies upon the payment receipts which are annexed on page nos. 166 to 168.

3. Learned counsel for the defendants submits that the payment receipt relied upon by the plaintiffs pertains to the receipts executed by the erstwhile partners of defendant no.1. She further on instructions submits that defendant no.1 has executed a mortgage deed dated 28th November 2024. She, however, submits that since the mortgage deed was executed after the impugned order, the same was not placed on record before the City Civil Court.

4. A perusal of the payment receipts, prima facie indicates that the entire payment of consideration amount is paid to defendant no.1. The dispute if any *inter se* between the partners cannot defeat the rights created in favour of the plaintiffs. Hence, during the pendency of the notice of motion, the plaintiffs would be entitled to

the ad interim protection.

5. The defendants are at liberty to file an appropriate affidavit before the City Civil Court placing on record third party rights if any created in the suit flat. Since, the notice of motion for interim relief is still pending before the City Civil Court, I am not inclined to record any further reasons on merits, as it may cause prejudice to the rival contentions of both the parties.

6. In view of the payment receipts relied upon by the plaintiffs towards the entire consideration amount to defendant no.1, I see no reason why the plaintiffs should not be granted ad interim relief.

7. Hence, during the pendency of notice of motion, by way of ad interim relief defendants shall not create any third party interest in respect of the suit flat.

8. It is clarified that notice of motion shall be heard on its own merits uninfluenced by the observations made in this order.

9. Appeal from order is allowed in the aforesaid terms. In view of the disposal of the appeal from order, the pending interim application is disposed of as infructuous.

(GAURI GODSE, J.)