

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 656 OF 2025
WITH
INTERIM APPLICATION NO. 13602 OF 2025
IN
APPEAL FROM ORDER NO. 656 OF 2025

Sharad Chokhani HUF

Appellant / Orig.
.. Defendant No.5

Versus

Ashok Sharma and Ors.

.. Respondents

-
- Mr. Aadil Parsurampur a/w. Ms. Apeksha Singh, Advocates for Appellant.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2026.

P.C.:

1. Mentioned at the time of rising.
2. Heard Mr. Parsurampur, learned Advocate for Appellant.
3. He has expressed exigency while mentioning the matter. His matter is listed at Sr. No.12 today. He would submit that Appellant is Defendant No.5 in the Suit proceedings before the Trial Court and the impugned order has been passed *ex-parte* without hearing the Appellant injuncting Appellant from dealing with the suit property. On facts, he would submit that Appellant is a *bonafide* purchaser for value in an auction proceeding from the Bank and he has been put in possession rather physical possession of the suit flat.

4. He would submit that Plaintiff is a rank third party outsider who claims to have allotment of the same suit flat in his name and despite he having refused interim relief by this Court previously and the Suit been transferred before the City Civil Court, while deciding the Motion *exparte* trial Court has referred to previous allotment which *prima facie* cannot fructify in view of the fact that the suit flat was mortgaged to the incumbent Bank which ultimately proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the flat was purchased by Appellant before me in auction .

5. In such gross facts, the order passed by the learned Trial Court directing the auction purchaser Defendant not to deal with the flat and restraining him is a very harsh order, especially in the aforementioned facts when has not even been heard.

6. Another intriguing fact brought to my notice by Mr. Parsurampururia is evident on reading the impugned order. It is seen that Reply was filed by Defendant before the Trial Court in the Motion and the matter was adjourned to a particular day, but before that adjourned day, the matter was heard on the previous day in the evening and the impugned order was passed *exparte*. In such gross facts *prima facie* the impugned order is not sustainable. Once the Reply is filed by the Defendant, it is the duty of the Trial Court to ensure that

the Defendant be heard and more specifically so in the facts of the present case which are delineated and alluded to hereinabove.

7. In that view of the matter, an arguable case is made out by Mr. Parsurampuriah, especially so because Defendant was never heard and the impugned order is an *ex-parte* order. In that view of the matter, the order is *prima facie* not sustainable since Defendant ought to have been heard by the Court before passing such an order *ex-parte*.

8. Hence, issue notice to Respondents. Humdast permitted.

9. In addition to Court notice, Appellant is permitted to serve copy of Appeal From Order, Interim Application and this order on Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

10. Right course of action in my opinion would be to set aside the impugned order and direct the learned Trial Court to hear the Notice of Motion of Plaintiff in accordance with law and hear both the parties and thereafter pass final order.

11. Copy of this order shall be served by the Advocate for Appellant on Plaintiffs who are Respondents before me. Plaintiffs are directed to remain present before this Court on the next adjourned date when this Court proposes to pass appropriate directions and

orders to dispose of the present Appeal From Order and Interim Application with above directions without prejudice to rights of both parties.

12. Stand over to **20th April 2026**. To be placed under the caption '**First on Board**'.

[MILIND N. JADHAV, J.]

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