



2026:BHC-AS:21867

25. AO 845.2022  
Shadaab Patel vs. B'bay Isle Developers

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 845 OF 2022  
WITH  
INTERIM APPLICATION NO. 17698 OF 2022  
IN  
APPEAL FROM ORDER NO. 196 OF 2024

Shadaab Shabbir Patel

... Appellant/Applicant  
(Orig. Plaintiff)

V/s.

Bombay Isle Developers Pvt. Ltd. And Ors.

... Respondents  
(Orig. Defendants)

WITH  
INTERIM APPLICATION NO. 559 OF 2025  
IN  
APPEAL FROM ORDER NO. 845 OF 2022

Bombay Isle Developers Pvt. Ltd. And Ors.

... Applicant/Appellant  
(Oig. Defendants)

V/s.

Shadaab Shabbir Patel

... Respondents  
(Orig. Plaintiff)

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**Mr. Vagish Mishra** a/w. Raju Ram Kuleriya a/w. Shubham Mishra i/b. Law  
Counsellor for the Appellant/Applicant

**Mr. Rudresh Jagdale** a/w. Rajdeep Singh Nanuan i/b. Sagar Sable for  
Respondent nos.1 to 3

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CORAM : FARHAN P. DUBASH, J.

DATE : 24<sup>th</sup> MARCH 2026

**P.C. :**

1. The present Appeal challenges an order dated 29<sup>th</sup> July 2022 passed by the Trial Court in Notice of Motion No.2329 of 2022. This Notice of Motion was taken out by the Appellant/Original Plaintiff seeking an interim relief of injunction restraining the Respondents/Original Defendants from disturbing the Plaintiff's possession of the suit property. The Suit preferred by the Plaintiff in the Trial Court seeks specific performance of an oral agreement in respect of Flat no.502/B situated on the 5<sup>th</sup> floor of a building known as Kamal Vishranti Kutir, situated on plot no.104-D, TSP III, opposite Saint Teresa, Bandra West, Mumbai (**suit property**). In the well reasoned order passed by the Trial Court, due regard has been given to the fact that upon perusal of the documentary evidence that was placed before it, the Plaintiff had failed to make out a *prima facie* case from which an oral agreement for sale of the suit property could be made out.

2. The Trial Court has then adverted to a registered deed of mortgage that was executed by the Defendant in favour of Tata Capital Finance Services dated 20<sup>th</sup> October 2017. The Trial Court has also noted that in the plaint, the Plaintiff had knowledge of this transaction because it was pleaded that the secured creditor had affixed a notice on the suit property and therefore, the Trial Court has recorded a finding that the relief



sought by the Plaintiff against the Defendants as regards to not creating any third party interests has become redundant in light of the mortgage in favour of Tata Capital Finance Services already being created by the Defendant.

3. Insofar as possession of the suit property is concerned, the Trial Court has noted that admittedly the Appellant/Original Plaintiff was in possession thereof. However, this position was disputed by the Defendant, who claimed that the Appellant/Original Plaintiff had trespassed into the suit property and the Defendants have also instituted separate proceedings in respect thereof.

4. The Trial Court has also noted that the secured creditor viz. Tata Capital Finance Services has also initiated the proceedings for recovery of the amount against the Defendants and the secured creditor cannot evict the person who is in possession without following the due process of law. Thus, by noting the aforesaid, the Trial Court has recorded a *prima facie* finding that the balance of convenience was not in favour of the Appellant/Original Plaintiff. In light of the above, the Trial Court has declined to pass any orders of possession in favour of the Appellant/Original Plaintiff.

5. I see no reason to defer from the findings recorded by the Trial Court in the impugned order which is a well reasoned order considering the



facts and circumstances of the case. No case is made out by the Appellant to warrant interference with the impugned order.

6. In the premises, Appeal from Order No. 845 of 2022 is dismissed with no order as to costs.

7. All pending Interim Applications filed therein, if any, also stand disposed of in terms of this order, and all interim orders passed therein, if any, shall stand vacated.

8. After the order is dictated, Mr. Vagish Mishra, learned Counsel for the Appellant seeks a stay of the operative part of this order for a period of one week and for continuation of the earlier order of *status quo*. However, considering the findings that are recorded in the impugned order and which have been confirmed by this Court, the *status quo* order cannot be continued.

( FARHAN P DUBASH, J. )

Jyoti Pawar