

BOMBAY HIGH COURT

Pradyut

Vs.

Suryakant

A.F.O. No. 185 of 1977

(Madon, J.)

25.04.1978

JUDGEMENT

Madon, J.

1. This is an appeal against an order of the Bombay City Civil Court granting a temporary injunction in a suit filed under Order 21 Rule 103 of the Civil Procedure Code 1908.

2. The material facts which have given rise to this Appeal are that the Second Respondent filed a suit in the Bombay City Civil Court against the Third Respondent, being Suit No. 8639 of 1969, to recover a sum of Rs. 20,041 with further interest on the principal sum of Rs. 20,041. It appears that in respect of some other dealings between these two Respondents the Second Respondent had filed a prosecution against the Third Respondent in which the Third Respondent was convicted and sentenced to imprisonment. The said suit No. 8639 of 1969 was decreed *ex parte* on March 31, 1970. The Second Respondent thereafter took out execution proceedings, and in the said execution proceedings a warrant of attachment was issued under Order 21 Rule 54 of the Civil Procedure Code attaching the right, title and interest of the Third Respondent in a flat, namely, Flat No. 9, on the first floor of a building situate at 41-A, Podar Road, Santa Cruz (West), Bombay-54, belonging to Paresh Co-operative Housing Society Limited. The right, title and interest of the Third Respondent in the said flat were attached on Aug. 8, 1970. It appears that the shares in the said co-operative housing society with respect to the said flat belonged to one Ratilal Chande and his wife who sold them to the Third Respondent. The said shares were, got transferred by the Third Respondent not in his own name but in the name of his wife Shashikala and his brother Hasmukh, who applied to the said society for transfer of the said shares to their names, which application was granted. Thus, in the record of the said society the registered holders of the said shares were the Third Respondent's wife and his brother Hasmukh. After the said flat was attached, the Third Respondent's brother Hasmukh took out a chamber summons on Sept. 11, 1970 to raise the said attachment on the ground that the

said flat was in the sole and absolute ownership of himself and the Third Respondent's wife Shashikala. Shashikala herself did not adopt any proceedings to get the said attachment raised. The said chamber summons was made absolute on Nov. 27, 1970, but in a civil revision application filed in this Court against the said order, namely, Civil Revision Application No. 796 of 1970, this Court set aside the said order and remanded the said chamber summons to the City Civil Court to dispose of this matter in the light of the observations made in the said judgment. On remand the said chamber summons was dismissed on Sent. 30, 1971 by the City Civil Court on the ground that Shashikala and Hasmukh were not the owners of the said flat and had no right, title or interest therein. No steps were taken by Hasmukh to challenge the said order by filing a suit under Order 21 Rule 103 of the Civil Procedure Code, and accordingly the said order became final.

3. In Pursuance of the attachment levied on the said flat, the said flat was put up for sale, and on Nov. 25, 1971 the proclamation of sale was settled in the presence of the Third Respondent, and the sale by auction was fixed on March 1, 1972. On Feb. 14, 1972 the said society was served with a notice from the Court with respect to the holding of the said auction sale. On Feb, 28, 1972 the Third Respondent filed a suit in the said Court, namely, Suit No. 2011 of 1972, to set aside the said *ex parte* decree and took out a notice of motion to stay the said auction sale. On March 1, 1972 the said notice of motion was dismissed and the said flat was sold by auction. At this auction sale the secretary of the said society as also the Third Respondent were present. The highest bid, namely, of Rs. 24,000, was given by one Bhupendra, the brother of the Appellant, who gave the said bid on behalf of the Appellant. The Appellant duly deposited the full amount of his bid with the Sheriff of Bombay, and on March 15, 1972 a certificate to this effect was issued by the Sheriff in favor of the Appellant. On March 28, 1972 the Third Respondent took out a chamber summons to set aside the warrant of attachment and the proclamation of sale and for dismissal of the execution application filed by the Second Respondent In the said chamber summons the Third Respondent contended that the said flat, being a flat in a co-operative housing society, was not liable to be attached and sold in execution of the Court's decree. That chamber summons was dismissed by the City Civil Court on April 24, 1972. In an appeal filed against the said order of dismissal Vaidya, J., upheld the contention of the Third Respondent and held that a flat in a co-operative housing society was not a saleable property and was, therefore, not an attachable property under Section 60 of the Civil Procedure Code, 1908. Vaidya, J., allowed the said chamber summons in part and directed that the attachment and sale of the said flat be set aside. The judgement of Vaidya, J., is reported as *Harsukh Jadhavji Joshi v. Ramesh Himatlal Shah*¹, Against this order of Vaidya, J., the Second Respondent filed a Letters Patent Appeal. In the said Letters Patent Appeal a Division Bench of this High Court consisting of Bhole and Mukhi, JJ., held that an allottee of flat in a co-operative housing society registered under the Maharashtra Co- operative Societies Act, 1960, had no saleable interest in the flat which was capable of being attached and sold in execution of a decree of a Court. The judgement of the Division Bench is reported as *Ramesh Himatlal Shah v. Harsukh Jadhavji Joshi*², In the result, the said Letters Patent Appeal was dismissed on November 2, 1973.

4. During the pendency of the said Letters Patent Appeal the Second Respondent wrote a letter on December 21, 1972 to the secretary of the said society enclosing along with it a copy of the judgement of the City Civil Court given on Sept. 30, 1971 whereby it finally dismissed the chamber summons taken out by the Third Respondent's brother Hasmukh. This letter was received by the said society on Jan. 11, 1973 Against the judgment of the Division Bench the Second Respondent filed an appeal by special leave to the Supreme

¹75 Bom LR 649

²(1974) 76 Bom LR 375

Court, being Civil Appeal No. 1539 of 1974. According to the Appellant, by his letter dated Jan. 22, 1974 he had informed the secretary of the said society about the filing of the said appeal. Meanwhile the First Respondent purchased the said flat and the said shares for a sum of Rs. 35,000. According to the First Respondent, he negotiated for the purchase of the said flat with Shashikala and Hasmukh in or about the end of April 1974. He paid a sum of Rs. 35,000 for the sale of the said flat and a sum of Rs. 1,500 for transfer of the said shares by two separate cheques, both dated May 1, 1974. On the same day he submitted his application for membership to the said society and was admitted as a member and the said shares were transferred to his name on May 15, 1974. The First Respondent was put in possession of the said flat. In view of the fact that during the pendency of the appeal to the Supreme Court the said flat had been sold to the First Respondent, notice of the hearing of the said appeal was given by the Supreme Court to the First Respondent After considering the scheme of the Maharashtra Co-operative Societies Act, 1960, the Supreme Court held that the right or interest to occupy a flat in a tenant co-partnership housing society under the said Act was liable to attachment and sale in execution of a decree against a member in whose favour or for whose benefit the same had been allotted by the society, the right or interest to occupy such a flat being a species of property. In the result, the Supreme Court held that the attachment of the said flat and its sale to the Appellant were valid. In the course of its judgement the Supreme Court observed that it would be for the auction purchaser first to obtain membership of the society, and the Court, before confirmation. of the sale, would insist upon his membership of the society which it would not be unreasonable to assume, would be granted by the society. The judgement of the Supreme Court is reported as *Ramesh Himmatlal Shah v. Harsukh Jadhavji Joshi*³,

5. Thereafter the Appellant filed a review petition in the Supreme Court, being Review Petition No. 74 of 1975. Notice of this petition was given to the Third Respondent as also to the First Respondent, but neither of them appeared at the hearing of the said petition. The said review petition was decided on Nov. 26, 1975, and the Supreme Court held that there was no necessity in law for acquiring prior membership of a Co-operative Society as a condition precedent to confirmation of the sale and that the auction purchaser need not, therefore, first become a member of a co-operative society, and the Court before confirmation of the sale to him would not insist upon his membership of the co-operative society. On Dec. 24, 1975 the City Civil Court confirmed the sale in favour of the Appellant. Notice of the application for confirmation of the sale was given to the first Respondent, and the First Respondent appeared through an advocate

who submitted that the rights of the First Respondent as a subsequent purchaser should remain unaffected by the order of confirmation. Accordingly the Court passed an order that the question of the First Respondent's rights as a subsequent purchaser would be considered if and when the rights of the Appellant as auction purchaser arose for consideration in any proper proceedings. Thereafter on March 6, 1976 on the application of the Appellant a warrant for possession was issued. The execution of this warrant was obstructed by the First Respondent on March 11, 1976, and on March 17, 1976 the Appellant took out a chamber summons under Order 21 Rule 97 of the Civil Procedure Code against the First Respondent to remove the said obstruction. On Sept. 30, 1976 the said summons was made absolute by Judge S.R. Shah. Thereafter on November 8, 1976 the First Respondent filed a suit in the City Court under Order 21 Rule 103 of the Code, being Suit No. 7461 of

³⁷⁷ Bom LR 549

1976. In the said suit he took out a notice of motion to restrain the Appellant and/or the Second Respondent from taking any steps in execution for recovery or possession of the said flat. By his order dated Feb. 28, 1977 Judge Suresh of the City Civil Court granted the temporary injunction prayed for by the First Respondent It is against this order that the present Appeal has been filed.

6. In granting the said temporary injunction the learned Judge has brushed aside the authorities cited before him on the ground that these were authorities of other High Courts, and had merely persuasive value and that the position contrary to that laid down by all the said authorities could equally be argued. He has further observed with respect to the review petition filed in the Supreme Court, in which their Lordships have expressly stated that though notice was given to the First and Third Respondents no one had appeared to contest the said petition; that he did not know whether any notice was in fact served or not. In view of the aforesaid statement made by Their Lordships of the Supreme Court in their said judgment on the review petition, this was an astonishing observation for the learned Judge of the City Civil Court to have made in his judgment. He has further observed that he did not know if had the First Respondent appeared in the review petition, whether the order would not have been different, and that that was an additional factor which had to be taken into account in considering whether a temporary injunction as prayed for should be granted or not. These observations of the learned Judge of the City Civil Court would mean that according to him a wrong order was passed by the Supreme Court by reason of the fact that the First Respondent had not appeared in the matter and presented his side of the case. The judgments of the Supreme Court are binding upon all parties. Under Article 11 of the Constitution of India the law declared by the Supreme Court is to be binding on all courts within the territory of India. This is irrespective of the fact whether a matter is decided by the Supreme Court *ex parte* or after hearing both parties. In making these observations the learned Judge appears to have forgotten that judgments of the Supreme Court are binding not merely upon the parties before it in that particular case but on all courts in India and consequently upon all parties who appear in these courts as binding precedents.

7. Before me Mr. Zaiwalla, learned Counsel for the Appellant, has urged two points. He has

submitted that under Section 65 of the Civil Procedure Code when an immovable property is sold in execution of a decree and such sale has become absolute, the property is deemed to have vested in the purchaser from the date of the sale and not from the time when the sale became absolute. Secondly he has submitted that where an attachment is made any private transfer or delivery of the property attached pending such attachment is void as against all claims enforceable under the attachment and the fact that such alienation was made while the attachment has been raised in pursuance of an order of a lower Court which was subsequently reversed in appeal made no difference.

8. The position in law is clear and well-settled by authorities with respect to both these points. Turning to the first point urged by Mr. Zaiwalla, Section 65 of the Civil Procedure Code provides as follows :-

"65 Purchaser's title.

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute."

In *Janak Raj v. Gurdial Singh*⁴, the Supreme Court had to consider the case of an auction, purchaser in execution of a decree, which decree subsequent to the auction has been reversed in appeal. In that case a house was sold in execution of an *ex parte* money decree. Thereafter in appeal the said decree was reversed. After reversal of the decree the auction purchaser made an application for confirmation of the sale. Reversing the decision of the Punjab High Court their Lordships of the Supreme Court held that notwithstanding the reversal of the decree, the auction sale must be confirmed and that the title of the auction purchaser related back to the date of the sale and not to the date of its confirmation. Relying upon this authority Mr. Zaiwalla has submitted that the title of the Appellant to the said flat and his right to occupy it related back to the date of the auction sale, namely, March 1, 1972, and it did not commence from the date of confirmation of the sale, namely, Dec. 24, 1975. Mr. Zaiwalla further submitted that the First Respondent who purchased the said shares and the said flat subsequent to the sale there of in favour of the Appellant did not acquire any right, title or interest in the said flat and had no right to occupy the said fiat as against the Appellant. In support of this submission Mr. Zaiwalla also relied upon the decision of a Full Bench of the Lahore High Court in *Sham Singli v. Vir Bhan*⁵, in which it was held that though a sale became absolute only when an order confirming; the sale was passed, by reason of the provisions of Section 65 of the Civil Procedure Code the property was deemed to have vested in the purchaser from the time when it was sold and not from the time when the sale became absolute and that in the interval between the date of the sale and its confirmation the auction purchaser acquired substantial interest in the property. The Full Bench further hold that the right of the auction purchaser could not be defeated by a transfer made by the judgment-debtor between the date of the sale and the confirmation of the sale. These authorities are directly in point and would show that the rights acquired by the Appellant in the

said flat cannot be defeated by a transfer made in favor of the First Respondent between the date of sale to the Appellant and the confirmation of such sale by the Court.

9. I will now consider the second point canvassed before me by Mr. Zaiwalla, learned Counsel for the Appellant, namely, the point founded upon Section 64 of the Civil Procedure Code. The said Section 64 provides as follows :-

"64. Private alienation of property after attachment to be void.

Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation : For the purposes of this Section, claims enforceable under an attachment include claims for the ratable distribution of assets."

Mr. Zaiwalla submitted that by reason of the operation of this Section an attachment levied on any property continues not only until the attached property is sold but until the sale is confirmed by the Court and becomes absolute. Mr. Zaiwalla further submitted that

⁴ AIR 1967 SC 608

⁵ AIR 1942 Lah 102 (FB)

though under the said Section 65 such a sale, when it becomes absolute, relates back to the date of the sale, until the confirmation of the sale the sale is not absolute but an inchoate one and is liable to be defeated or set aside by the Court refusing to confirm it. Mr. Zaiwalla further contended that since an attachment continues until the date of confirmation of the sale by the Court, a private transfer or delivery of the property attached or of any interest therein contrary to such attachment was void against all claims enforceable under the said attachment. In Mr. Zaiwalla's submission, the fact that between the date of attachment and the date of confirmation of the sale a Court had declared the attachment void or ordered it to be raised and it was thereafter that the private alienation was made makes no difference if the attachment was subsequently restored by a superior Court, whether in appeal, further appeal or in revision.

10. The position in law is well-settled by decisions of various High Courts. In *Annapurna Patrani v. Lakshmana Kara*⁶, a Division Bench of the Madras High Court held that where in execution of a decree property was attached but the petition for execution was dismissed for default and on appeal the order of dismissal for default was set aside, the effect of the appellate order was to restore the order attaching property and the trial Court would have to proceed with the execution application from the stage at which it had interrupted it by dismissing it for default. The Division Bench further held that the appellate order restoring attachment would relate back to the date when the attachment was first levied and would render invalid any alienation in the interim period. The Division Bench referred to an old decision of the Calcutta High Court in *Patringa Koer v. Madhabanand Ram*⁷, where it was held that there would be a revival of the attachment automatically so far as the decree-holder and the judgment-debtor were concerned,

but allowing the appeal would not have the effect of reviving the attachment as against a third party. Dissenting from this view the Madras High Court pointed out that it was not possible to understand how an attachment could be revived against the judgment-debtor only. The Division Bench observed (at p. 742 of AIR) :-

"If there is an attachment, then it must apply to everybody, for the very purpose of an attachment order is to prevent alienations by the judgment-debtors in favor of any person, whether he has knowledge of the attachment or not."

In later decisions the Calcutta High Court has taken the same view as found favor with the Madras High Court. In *Pratap Chandra Gope v. Sarat Chandra Gangopadhyaya*⁸, after discussing the various authorities on the subject a Division Bench of the Calcutta High Court held that it was not prepared to dissent from the interpretation which had been put by all the High Courts on the relevant provisions and the corresponding provisions of the earlier Civil Procedure Code. The Court held that the order for release from attachment did not put an end to the attachment so as to leave the claimant free to deal with the property as he liked and that if a suit were brought by the decree-holder to establish his right to attach the property and a decree were passed in his favor, the effect of the decree was to set aside the order of release and to maintain uninterrupted the attachment originally made, and the result would be that any private transfer of the property by the claimant, though made after an order under Order 21 Rule 60 of the Civil Procedure Code releasing the property from attachment, would be void under Section 64

⁶ AIR 1950 Mad 740

⁸ AIR 1921 Cal 101

⁷(1911) 14 Cal LJ 476

of the Code, if the right to attach was subsequently established by a suit under Order 21 Rule 63 of the Code. The Division Bench pointed out that the earlier case of *Patringa Koer v. Madhabanand Ram*⁹, was a case of an attachment before judgement where the rule which prevailed was different and not of an attachment in execution of a decree. The same view was taken by another Division Bench of the Calcutta High Court in *Najimunnessa Bibi v. Nacharaddin Sardar*¹⁰, The following observations of Rankin, J., in that case are pertinent and require to be quoted in extenso (at p. 747) :-

"Attachment is not merely to take property into the custody of the Court, its main point is to crystallize the rights of the parties as at given point of time. Until attachment, a judgment creditor cannot litigate in his debtor's place to assert his debtor's rights while the attachment lasts, no new interest can be created to defeat it; and although, in this country, owing partly to the rule as to ratable distribution, attachment does not amount to a specific charge in favor of the decree-holder or by itself gives him, in strictness, a title thereto, it is nevertheless the basis of all the judgment-creditor's right to assert his debtor's interest in the particular property in question..... It is quite plain that, if an attachment comes to an end validly, then up a second attachment no Court can refuse to recognize an interest validly created in the meanwhile. It is also plain that if an attachment is wrongly released and the right to attach is established subsequently

according to law either by appeal or otherwise, the attachment will relate back to the time when it was made."

The same view was reiterated by yet another Division Bench of the Calcutta High Court in *Sushila Bala Dasi v. Guest Keen Williams, Ltd.*¹¹, The same view has also been consistently taken by the Allahabad High Court. It is unnecessary to refer to all the authorities of the High Court, Suffice it to refer to only one of them, namely, *Gopal Prasad v. Kashinath*¹², In that case it was held that an order of the High Court restoring an attachment which had been raised by an order of an inferior court related back to the date when the attachment was first levied, and its effect was to invalidate a sale made when on the face of the record there was no subsisting attachment of the property sold.

11. In this connection, it will be useful to refer to the judgement of a Division Bench of this High Court in *Lalu Mulji Thakar v. Kashi Bai*¹³ This was a case under the earlier Civil Procedure Code 1859. Referring to the corresponding provisions of that Code the Division Bench held that an attachment which had been removed and subsequently restored as having been wrongly removed was valid and operative throughout, and any private alienation during the period when there was no attachment on the record was invalid. In the particular case before it the Division Bench, however, held that the sale of the attached property while there was no attachment subsisting on the record was valid because that sale was not a private sale but was a sale made in execution of another decree.

12. Mr. Mahuvakar, learned advocate for the First Respondent, however, urged that these authorities had no application to the facts of the present case because the First Respondent had purchased the property not from the judgment-debtor but from his brother and wife,

⁹(1911) 14 Cal LJ 476

¹¹ ILR (1949) 1 Cal 177

¹³(1886) ILR 10 Bom 400

¹⁰ AIR 1924 Cal 744

¹² ILR (1920) 42 All 39

namely, the judgement-debtor's benamidars. Mr. Mahuvakar further contended that in any event the First Respondent was a *bona fide* purchaser for value without notice and the sale in his favour was not affected by the subsequent restoring of the attachment. I find myself to unable to accept either of these two contentions. In their judgement with respect to this very attachment their Lordships of the Supreme Court in *Ramesh Himmatlal Shah v. Harsukh Jadhavji Joshi*¹⁴, have observed as follows :-

"It is not disputed before us and it has been so held by the Court in the claim case by the judgment-debtor's brother that the respondent purchased the flat benami in the name of his brother Hasmukh and his wife Shashikala. Although, therefore, the respondent is not a registered holder of the flat, it is clear that the flat is held by his brother and his wife on behalf of the respondent. This is to be noted as Section 60, Civil Procedure Code reaches a benami holding."

This decision of the Supreme Court makes it clear that the principle laid down in Section 84 of the Civil Procedure Code applies both where the property attached stands in the name of the judgment-debtor as where it stands in the name of another person as a benami for the judgment-debtor. Section 60 of the Code makes attachable, to quote the words of the Section, "all other saleable property, moveable or immovable, belonging to the judgment-debtor. or over which, or the profits of which he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf." The contention of Mr. Mahuvakar that a *bona fide* purchaser for value without notice of the fact that there was previously an attachment on the property which he was purchasing is not affected when the attachment is subsequently restored by a superior Court is equally without foundation. In the cases which I have referred to above, the purchaser of the attached property was a purchaser who did not have notice of the earlier attachment and the fact that it had been raised. It appears that the Third Respondent has sold the said shares and the flat keeping the First Respondent in ignorance of the previous history relating thereto. The secretary of the said Paresh Co-operative Housing Society Limited, one Bharat Hiralal Shah, has made an affidavit in reply on the chamber summons taken out by the Appellant to remove the obstruction caused by the First Respondent This affidavit was affirmed by the said Shah on April 14, 1976. In that affidavit he has stated that the said society did not inform the First Respondent about the previous litigation. This is a surprising statement. It was the duty of the said society as also of the vendors to have informed the purchaser, namely, the First Respondent, about the previous litigation. It was thereafter for the First Respondent to decide whether such litigation constituted a cloud in the title of his vendors and whether if the matter went higher, he was prepared to take the risk of a superior Court coming to a contrary conclusion. From the fact that the society and his vendors may have failed in their duty to inform the First Respondent about these facts it cannot, however, follow that the sale made in favour of the First Respondent prevailed over the attachment of the said property, or nullified the sale of the said property in execution to the Appellant. The proper remedy of the First Respondent would be against the brother and wife of the Third Respondent or the Third Respondent or the said society or all of them, as the case may be, but he certainly is not entitled to the

¹⁴⁷⁷ Bom LR 549 at p. 550

reliefs claimed by him in this suit. It is surprising how the learned Judge of the City Civil Court who granted to the First Respondent the prayer in his notice of motion has brushed aside the various authorities cited before him, and which have been cited before me, by saying that these authorities being of High Courts other than the Bombay High Court had only persuasive value and that a contrary position was equally arguable. Further, while referring to the judgment of the Supreme Court in this very case holding that the right of occupancy of the said flat was attachable, namely, *Ramesh Himmatlal Shah v. Harsukh Tadhavii Joshi*¹⁵, , and in the review petition subsequently presented to the Supreme Court to correct its observation made in the last para graph of its judgment that it was necessary for the auction purchaser to obtain the membership of the said society before obtaining confirmation oh the sale, the learned Judge has made certain remarks which are even more surprising. It will be recalled that in its judgment on

the said review petition the Supreme Court held that the obtaining of the membership of the society was not a condition precedent to confirmation of the sale. It will be further recalled that the judgment of the Supreme Court in the said review petition contained the statement that notice had been given, to the Third Respondent as also to the purchaser, namely, the First Respondent, and that these Respondents did not appear at the time when the order of the Supreme Court was passed.

With reference to those statements of Their Lordships of the Supreme Court the learned Judge of the City Civil Court has observed as follows :-

"I do not know whether any notice was in fact served or not. But what is important is that in the main petition the Supreme Court did not hear the present plaintiff (that is, the First Respondent). Therefore, I do not know if in fact the present plaintiff that is, the First Respondent) had appeared in this Review Petition, whether the order would have been any different. This is an additional factor which will have to be taken into account."

In making these observations the learned Judge appears to have lost sight of the fact that he was making comments upon a judgment given by the Supreme Court. The implication of his observation that he did not know whether any notice was in fact served upon Respondents Nos. 1 and 3 or not amounted to saying that Their Lordships of the Supreme Court proceeded to dispose of the said review petition without caring to ascertain whether the parties to whom they had directed notice to be given had in fact been served with such notice. In saying that he did not know whether the Supreme Court would have given a different judgment than the one which it did in the review petition had the First Respondent appeared before him, the learned Judge overlooks the fact that unlike decisions given by him decisions of the Supreme Court are binding not merely on parties before the Supreme Court but on all persons and that under Article 141 of the Constitution the law declared by the Supreme Court is to be binding on all Courts within the territory of India. Judicial discipline and propriety require that such observations should not be made by subordinate Judges and Courts with respect to superior Courts.

13. At this stage, realizing that in view of what I have held above this Appeal must be allowed and his notice of motion must stand dismissed and that in view of my findings his suit must fail and further realizing that his remedy, if any, lay against his vendors and the

¹⁵⁷⁷ Bom LR 549 : (AIR 1975 SC 14701)

said society, the First Respondent commenced negotiations for settlement of the entire snit, and accordingly the parties arrived at a settlement whereby in consideration of certain undertakings given to this Court and statements made by the First Respondent the Appellant agreed not to execute the decree for an agreed period. These consent terms have been reduced to writing, signed both by the learned counsel for the Appellant and the learned advocate for the First Respondent as also by the Appellant and the First Respondent in person and have been taken on file.

14. In the result, I allow this Appeal and set aside the order appealed against, but in view of the consent terms arrived at between the Appellant and the First Respondent, instead of dismissing the First Respondent's said notice of motion I pass the following order thereon by consent :-

15. Respondent No. 1 agrees and undertakes to this Court to vacant and give vacant possession to the Appellant of Flat No. 9 of Paresh Co-operative Housing Society Limited 41-A, Podar Road, Santa Cruz (West), Bombay-54, on or before December 31, 1981 and to transfer shares Nos. 411 to 440 of the said society to the Appellant and to sign all necessary applications for this purpose inasmuch as the First Respondent will have no right to occupy the said flat after December 31, 1981, and the First Respondent further undertakes to this Court not to deal with or dispose of or in any manner create any right, title or interest in or encumbrance on the said flat or induct any other person or persons in the said flat.

16. The First Respondent further agrees and undertakes to this Court to pay all outgoings, loan installments, taxes, etc. in respect of the said flat until vacant possession of the same is handed over by the First Respondent to the Appellant.

17. The First Respondent states that he himself, his wife and his children are the only persons residing in the said flat.

18. The Appellant agrees to this Court not to execute the Warrant of Possession herein dated March 6, 1976, in view of the aforesaid undertakings and statements made by the First Respondent, until Dec. 31, 1981.

19. The suit herein, namely, Bombay City Civil Court Suit No. 7461 of 1976, will be got dismissed for want of prosecution with no order as to costs.

20. There will be no order as to costs of this Appeal.
Appeal allowed.