

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1251 OF 2015

Michelle Don Grasto

..Petitioner

Vs

Sai Shraddha Construction and
Ors.

.. Respondents

Mr. Aditya Shiralkar, I/b Prime Legem, Advocate for Petitioner.
Mr. P.M. Vora, i/b M/s. Pramodkumar & Co, Advocate for
Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 11/12/2015

PC:

1. Not on Board. At the request of Mr.Shiralkar, taken up for admission. Heard Mr. Aditya Shiralkar, learned counsel for the petitioner and Mr. P.M.Vora, learned counsel for respondent no.1 at length.On oral application made by Mr. ShirAlakar, respondents no.2 to 4 are deleted from the present proceedings as respondent no.1 being the plaintiff, is the only contesting respondent. Leave as prayed for is granted. Amendment shall be carried out forthwith.

2. Rule. Mr.Vora waives service for respondent no.1. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of

India, original defendant has challenged the judgment and order dated 5.12.2014 passed by the learned Judge, City Civil Court, Greater Mumbai on application made by defendants 1(a) to 1(c) for setting aside order dated 24.11.2014. By order dated 24.11.2014, the learned trial Judge did not permit these defendants to submit rejoinder in Notice of Motion No.2836 of 2014 in Suit No.2771/2012.

4. It is evident from record that respondent no.1-plaintiff has filed Notice of Motion praying, inter alia, for interim reliefs. Pending that Motion, the defendants took out Notice of Motion No.2836 of 2014 raising issue of jurisdiction under Section 9-A of C.P.C. Mr. Vora strenuously contended that though the Motion was taken out in the year 2014, till date the Court has not considered ad-interim application because of pendency of the Motion taken out by the defendants under section 9-A of C.P.C. He submitted that if the Court is inclined to set aside the impugned order, the trial Court be directed to first consider grant of ad-interim relief, as prayed for in the motion taken out by respondent no.1-plaintiff. Mr. Shiralkar submits that learned trial Judge may be directed to consider Application for ad-interim relief as expeditiously as possible and preferably within one week from today. The defendants will extend full cooperation for disposal of ad-interim relief application. In view thereof, in my

opinion, following order will meet ends of justice:

- (i) The impugned order is set aside, thereby, permitting the petitioner to tender rejoinder. The learned trial Judge shall accept rejoinder of the petitioner.
- (ii) The learned trial Judge will first consider grant of ad-interim relief within one week from today and thereafter shall proceed to consider the Motion of the petitioner under section 9-A of CPC and thereafter will consider grant of interim relief.
- (iii) All contentions of the parties on merits are expressly kept open.
- (iv) Rule is made absolute in aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)