

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1060 OF 2015

M/s. K.K. Builder & Contractors
also known as M/s. K.K. Builders

.. Petitioner

vs.

M/s. Pranay Realtors

.. Respondent

Mr. N.V. Walawalkar, Senior Advocate i/b Ms Neeta Karnik for the
Petitioner.

Mr. P.S. Dani, Senior Advocate i/b Mr. Lalit V. Jain for the
Respondent.

CORAM : M. S. SONAK, J.

DATE : 11 AUGUST 2015.

P.C. :-

1] After having heard this matter for some time, the learned
senior advocate for the parties as well as their instructing advocates,
state that this petition can be disposed of with the following agreed
order:

A] The Small Causes Court at Mumbai (Trial Court) to take
up for consideration the application for amendment under
Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC)
taken out by the plaintiff and dispose of the same within a
period of three weeks from today;

B] Thereafter, the Trial Court to take up the application
under Order 7 Rule 11 of CPC instituted by the defendant and
to dispose of the same within a period of four weeks
thereafter;

C] In case the application under Order 7 Rule 11 of CPC is dismissed, the Trial Court to take up for consideration the issue of preliminary jurisdiction under Section 9A of the CPC as directed by the Appeal Court in its order dated 11 December 2014 and dispose of the same as expeditiously as possible and in any case within a period of six months;

D] There shall be an ad-interim order restraining the defendant from creating any third party interest in the suit premises until the disposal of the application under Order 7 Rule 11 of the CPC. If however, the application under Order 7 Rule 11 of the CPC is dismissed, this ad-interim order shall continue upto disposal of the application under Section 9A of the CPC. If however, the Trial Court holds that it has jurisdiction, then the ad-interim order shall abide by the decision which the Trial Court shall take on application at Exhibit-15, which is to be considered afresh. It is made clear that in case the Trial Court holds that it has jurisdiction, then it shall proceed with the matter and dispose of the application at Exhibit-15 as expeditiously as possible and in any case within a period not more than thirty days.

E] In case, any tenements/galas in the suit building fall

vacant and there is occasion to create any tenancy or license, the defendant shall be at liberty to apply to the Trial Court for modifying the ad-interim order upon a case to case basis. Such application, if made, shall be considered on its own merits. However, the same shall be considered expeditiously.

F] In deciding the application for modification of ad-interim order or for that matter the application at Exhibit-15, the Trial Court should not permit itself to be influenced by any observations made by the Trial Court itself in its earlier order dated 16 September 2014, the Appeal Court's order dated 11 December 2014 or the circumstance that this Court has not chosen to go into the respective contentions of the parties.

G] The orders dated 11 December 2014 made by the Appeal Court and 21 July 2015 made by the Trial Court stand modified to the aforesaid extent.

H] All contentions of all parties on merits of their respective case are kept open for decision by the Trial Court.

I] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)