

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

WRIT PETITION NO.1382 OF 2015

Mahesh suresh Bhoj : Petitioner.
Versus
S.S.D. Builders and ors. : Respondents.

Mr. Kamlesh P Mali for the Petitioner.
Mr. Purushottam G Chavan for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 26th February 2015

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 22/1/2015 passed by the learned District Judge-12, Pune by which order the Appeal being Misc. Civil Appeal No.393 of 2014 came to be allowed and resultantly the order dated 12/9/2014 passed by the Trial Court i.e. the learned 5th Joint Civil Judge, Senior division, Pune allowing the Application (Exhibit 5) for temporary injunction came to be set aside.

2 The principal ground on which the order passed by the Trial Court has been set aside is that there is a variance in the area in the sale deed of the Plaintiff and the area mentioned in the layout. The Lower Appellate Court has also found a variance in the description of the property as mentioned in the sale deed of the Petitioner and the description of the property as mentioned in the sale deed of the Respondent No.1, and therefore expressed a doubt as to

whether the property claimed by the Plaintiff is the same as the property on which the Respondent No.1 was putting up the construction.

3 The injunction sought by the Plaintiff vide the said Application (Exhibit 5) was to the following effect :-

“The Defendant No.1 may kindly be restrained by the order of temporary injunction from carrying any further construction activity and creating third party interest over the suit property till the final disposal of the suit.”

As indicated above, the Trial Court had allowed the said Application (Exhibit 5) for temporary injunction but the Lower Appellate Court has set aside the said order.

4 In the above Petition, the Respondent No.1 herein i.e. the original Defendant No.1 has filed an affidavit of one Shri Baliram Kakooram Talreja, the partner of the Respondent No.1. In the said affidavit it has been stated that the details as regards the flats which have been sold in the building under construction were already disclosed at the hearing of the said Application (Exhibit 5) as well as in the subsequent affidavit dated 14/1/2015 filed in the proceedings. In paragraph 4 it has been stated that the construction of the building has been completed in the month of April 2014 and accordingly the said fact has been placed on record before the Trial Court vide a purshis filed in

the month of April 2014. In paragraph 5 it has been stated that the Pune Municipal Corporation vide its letter bearing N. OCC/1353/14 dated 9/2/2015 has issued Completion Certificate under the provisions of Section 263(1) of the Bombay Provincial Municipal Corporation Act.

5 Hence the factum of the building being completed and the Completion Certificate being issued by the Pune Municipal Corporation has therefore over taken the proceedings relating to the application for temporary injunction. The said facts therefore superimpose themselves on the said application inasmuch as by the application for temporary injunction what was sought was an injunction preventing the Defendant No.1 from proceeding further with the construction. In view of the events which have transpired post the impugned order, the application for temporary injunction has virtually turned infructuous. Since the above Petition arises out of the order passed on the application for temporary injunction, in view of the facts now mentioned in the affidavit filed on behalf of the Respondent No.1, it is not possible to grant any relief to the Petitioner/Plaintiff in view of the said events. Hence the order passed by the Lower Appellate Court allowing the Misc. Civil Appeal No.393 of 2014 and thereby rejecting the Application (Exhibit 5) for temporary injunction does not merit any interference at the hands of this Court for the reasons afore-stated. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

However, the Respondent No.1/Defendant No.1 would be bound by clause (4) of the impugned order which has been incorporated by the Lower Appellate Court as and by way of protecting the interest of the Petitioner/Plaintiff pending the suit.

[R.M.SAVANT, J]