

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

WRIT PETITION NO. 4732 OF 2015

Nalini Bhaskar Patil @ Neeta
Chandrakant Paatil

..Petitioner

Vs

Parvatibai Rajaram Patil and Ors

.. Respondents

Mr. A.L.Bhise i/b Mr. Kunjan Thakur, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 10/12/2015

PC:

1. Heard Mr. A.L.Bhise, learned counsel for the petitioner.
2. Mr. Bhise submitted that the petitioner, hereinafter referred to as 'plaintiff', has instituted suit for declaration, injunction and cancellation. During pendency of the suit, the plaintiff took out application under Order 39, Rule 1 and 2 and sought injunction restraining the defendants no.26 to 34 from creating third party interest in the suit properties or any part thereof and/or changing the nature of the suit properties and/or making any constructions on the suit properties or any part thereof, till the hearing and final disposal of the suit. The plaintiff has also sought injunction against defendant no.35 and its officers, employees from allotting and granting T.D.R./FS.I. or any other such benefits in respect of the reserved portion of the suit properties, bearing

S.No.104 to defendants no. 31 or anybody else and/or entering into any transactions with defendant no.31 in respect of the suit properties bearing S.No.104 till the disposal of the suit. The plaintiff has also sought mandatory injunction restraining defendant no.35 to suspend or to revoke the construction permission granted to defendant no.31 in respect of the suit properties bearing S. No.88, Hissa no.2, and S.No.104.

3. Mr. Bhise submitted that the learned trial Judge has not passed any order on this application. In my opinion, this amounts to refusal of ad-interim order against which Appeal from order under Order 43 is maintainable.

4. In view thereof, Mr. Bhise seeks permission to withdraw this petition with liberty to file Appeal from order challenging refusal of ad-interim order by not passing any orders.

5. On the motion made by Mr.Bhise, Petition is allowed to be withdrawn with liberty, as prayed for. It is made clear that I have not examined merits of the case. All contentions of the parties on merits are expressly kept open.

(R.G.KETKAR, J.)