

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

**APPEAL FROM ORDER (ST) NO.10303 OF 2015
WITH
CIVIL APPLICATION (ST). NO.10304 OF 2015**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Ms.Archana Khan i/b Mr.Rahul D. Motkari for the appellant

Mr.A.R.Mishra for respondent no.1

Mr.S.D.Patil for respondent nos.5 to 7

CORAM : K.K.TATED, J.

DATED : 23/04/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This Appeal from Order is preferred by original defendant no.3 to 3(d) challenging the order dated 27.3.2015 passed by Trial Court below Exhibit 6.
- 3 The learned counsel for the respondents plaintiffs raised preliminary objection about maintainability of Appeal from Order. He submits that plaintiffs filed application dated 27.3.2015 below Exhibit 6 before the Trial Court for compliance of order dated 11.9.2014 passed by

Trial Court in Notice of Motion No.2269 of 2014. The learned counsel for the respondents plaintiffs submits that Appeal from Order is not maintainable against the order dated 27.3.2017 below Exhibit 6. He further submits that by said order, plaintiff's application stand rejected. Hence, appellant is not aggrieved by the said order. Hence, there is no substance in the present Appeal from Order.

4 On the other hand the learned counsel for the appellant defendant no.3 to 3(d) submits that application filed by plaintiff below Exhibit 6 dated 27.3.2015 was under Order 39 Rule 4 of the Code of Civil Procedure, 1908 for variation of the injunction order. She submits that as the application filed by the plaintiff was under Order 39 Rule 4 of the Code of Civil Procedure, 1908, the Appeal from Order is maintainable under Order 43 Rule 1(r) of the Code of Civil Procedure. Hence, Appeal from Order be entertained according to law.

5 I have heard both the sides at length. I have gone through the application below Ex.6 filed by the plaintiff dt.27.3.2015. Bare reading of the application below Ex.6 shows that same was filed by the plaintiff for compliance of earlier order dt.11.9.2014 in Notice of Motion No.2269 of 2014.

In that application, plaintiff has not made any prayer for variation and or for modification of the injunction order. Hence, that application cannot be treated under Order 39 Rule 4 of the Code of Civil Procedure, 1908. Therefore, the present Appeal from Order is not maintainable. Same is dismissed.

6 In view thereof, Civil Application does not survive. The same is also dismissed as infructuous.

(K.K.TATED, J.)