

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 919 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 1120 OF 2015****IN****APPEAL FROM ORDER NO. 919 OF 2015****Smt.Savita Kantilal Kothari & Anr. Appellants****VERSUS****Smt.Nita Dinesh Kothari & Ors. Respondents**

Mr.Tejas Hatalkar, i/b. Mr.Shailendra Kanetkar for the Appellants.

Mr.P.J.Thorat for Respondent Nos. 1 to 3.

Mr.S.Amin, i/b.Ms.Nilam Pawar for Respondent No.4.

CORAM : R.D. DHANUKA, J.**DATED : 30th NOVEMBER, 2015****P.C.**

By this appeal from order, the appellant has impugned the order passed by the learned trial judge refusing to grant any ad-interim order in favour of the appellant (original plaintiff). The respondent nos. 1, 2 and 3 have already executed a leave and licence agreement in favour of the respondent no.4 bank. It is the case of the original plaintiff that they are co-owners of the suit premises. It is the case of the respondent nos. 1, 2 and 3 that they are exclusive owners in respect of the premises which is given by them on leave and licence to the respondent no.4. By an order dated 8th July, 2015, this court has refused to grant ad-interim relief.

2. The learned counsel for the respondent no.4 states that pursuant to the leave and licence agreement between respondent nos. 1 to 3 and the bank, and the

respondent no.4 bank has started their branch in the suit premises on 9th July, 2015. Statement is accepted. In my view, in view of the fact that the respondent nos. 1 to 3 have already created third party rights in favour of the respondent no.4, no relief can be granted in favour of the appellant. In my prima facie view the notice of motion filed by the appellant (original plaintiff) itself has become infructuous. I, therefore, pass the following order :-

- (a) Appeal from order is dismissed. No order as to costs.
- (b) In view of the dismissal of the appeal from order, the civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]