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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.974 OF 2015
IN
NOTICE OF MOTION NO.1860 OF 2015
IN
L.C. SUIT NO.2003 OF 2015

WITH
CIVIL APPLICATION NO.1193 OF 2015
IN
APPEAL FROM ORDER NO.974 OF 2015
IN
NOTICE OF MOTION NO.1860 OF 2015
IN
L.C. SUIT NO.2003 OF 2015

Omprakash Ramsingh	...Appellant
V/s.	
Sanjay Construction & Finance co. Ltd. & Ors.	...Respondents

Mr.Jagdish Jayale for the Appellant.

Mr.P.K. Dhakephalkar, Senior Counsel with Mr.Mayur Khandeparkar,
Mr.Manoj Sharma i/b L.C. Legal for the Respondent No.1.

Mr.Y.R. Chaudhari with Ms.Vrushali Mendak for Respondent No.3.

Ms.Meenakshi Sakhare, AGP for the Respondent No.4.

Ms.M.R. Bhoir for the BMC -Respondent No.5.

CORAM : R.D. DHANUKA, J.
DATE : 16TH NOVEMBER, 2015.

P.C. :-

1. By this appeal, the appellant has impugned the *ad-interim*

order passed by the learned trial Judge refusing to grant any relief. The order was passed on 18th July, 2015. From the impugned order passed by the learned trial Judge, it appears that the appellant (original plaintiff) had pressed prayer clause (b) only before the learned trial Judge. At that stage, no affidavit in reply was filed by any of the defendants before the learned trial Judge. There is no ad-interim order granted by this Court till date.

2. In my view, it would be in the interest of justice to direct the defendants to file their affidavit in reply on merits before the learned trial Judge and the notice of motion itself can be disposed of expeditiously.

3. Insofar as the statement made by the learned senior counsel appearing for the respondent no.1 before this Court on 30th July, 2015 that the suit property i.e. Stable Premises known as Omprakash Singh Tabela (Bholenath Tabela) and the 12 rooms situated and lying on final plot nos.98 and 99 of TPS VI, Khotwadi, Phirozshah Mehta Road, Santacruz (West), Mumbai – 400 054 is already demolished by them is concerned, the same is disputed by the learned counsel for the appellant. Learned senior counsel for the respondent no.1 however, maintains the statement made before this Court on 30th July, 2015.

4. The learned learned trial Judge is directed to dispose of

the notice of motion within three months from the date of the parties producing a copy of this order. Affidavit in reply shall be filed and served by the defendants within three weeks from today. It is made clear that all the contentions of both the parties are kept open. It is also made clear that the observations made by the learned trial Judge are *prima-facie*. The learned trial Judge shall decide the matter uninfluenced by the *prima-facie* observations made in the impugned order.

5. The appeal from order is accordingly disposed of. No order as to costs.

6. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)