

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9085 OF 2015

Mahesh Harischandra Dubey and Anr.] ... Petitioners

Versus

Noberth Edwad D'Souza and Anr.] ... Respondents

Mr. Kunal Bhanage a/w Mr. Darshan Modi for Petitioners.
Dr. Birendra Saraf a/w Mr. Anand Choratia i/b Mr. Yogesh N. Adhia
for Respondent No.2.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 29, 2015

P. C. :-

1. The two Courts have declined interim relief to the petitioners-plaintiffs. In doing so, both the Courts have appreciated the parameters like *prima facie* case, balance of convenience, irreparable loss and prejudice. The exercise of discretion by both the Courts cannot be said to be either perverse or arbitrary. The learned Counsel for petitioners has not been able to demonstrate any error of jurisdiction or error of principle.

2. The record reveals that building was constructed upon the portion of the suit property way back in the year 1969. The present

construction activity, to which the petitioners had taken objection, is really a redevelopment of the said building. From the photographs shown, even the redevelopment is at a substantially advanced stage. The Appeal Court, in its order dated 01/08/2015, has observed that the Advocate for the appellants/plaintiffs have not emphasized upon the construction activity in the portion of the suit property. Even with regard to the rest of the portion of the suit property, it cannot be said that the *prima facie* case has been made out or that the balance of convenience is in favour of grant of any interim relief. There is accordingly no case made out to interfere with the impugned order in the Writ Petition.

3. However, it is needless to add that any activity in or upon the suit property shall ultimately be subject to the final decision in the suit instituted by the petitioners.

4. The petition is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)