

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER (ST) NO. 27245 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 27248 OF 2015

Pandit Ramchandra Dive

.. Appellant

Vs.

Deepak Pandit Dive

.. Respondent

Mrs. Sulbha Arun Dhamale for the Appellant.
None for the Respondent.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 8th OCTOBER, 2015.

P.C.

1. Rule. Made returnable forthwith.
2. The respondent/defendant has been served. The affidavit of service is filed. The respondent/defendant's mother has accepted the service but refused to accept it. The courier service has been refused. The affidavit of service is taken on record.
3. The appellant/plaintiff is the father of the respondent/defendant. The appellant has applied for injunction restraining the respondent/defendant from remaining upon the suit premises owned by him. An ad interim application came to be made before the Bombay City Civil Court on 01.09.2015 under the draft Notice of Motion taken out by the appellant/plaintiff along with his affidavit-in-support. The ad interim application is not heard on merits. Only leave to register the Notice of Motion is granted. The direction for service is passed. The Notice of Motion is adjourned for service report. Thereafter on 07.09.2015 the appellant/plaintiff has filed the affidavit of service. The respondent/defendant appeared and sought time to file the reply. On 14.09.2015 the reply was

filed. Without an application of the appellant/plaintiff the hearing of the ad interim application was adjourned to 18.09.2015.

4. On 18.09.2015 the rejoinder of the appellant/plaintiff was filed. The ad interim application was not heard on merits and the ad interim hearing was adjourned to 15.10.2015.

5. Counsel on behalf of the appellant/plaintiff contends that mere adjournments one after another tantamounts to refusal of the ad interim relief. She is justified in her contention. The Notice of Motion has not been adjourned. The ad interim application has itself been adjourned. She contends that even on 15.10.2015 the learned Judge is not likely to hear the ad interim application.

6. Every applicant, who applies before the Court for any urgent relief of ad interim nature, is entitled to be heard. Upon hearing the application on merits the application may be granted or refused. Simplicitor granting adjournments would tantamount to refusal. Such refusal would be without hearing the case on merits. With this observation, at present, the Appeal from Order is disposed of. The Court trusts that the learned Judge shall consider the appellant/plaintiff's application on merits upon his case of urgency or dispose of the Notice of Motion itself.

7. The Appeal from Order and the Civil Application are disposed of accordingly.

(ROSHAN DALVI J.)

C E R T I F I C A T E

"I certify that this Order uploaded is a true and correct copy
of original signed Order."