

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

APPEAL FROM ORDER NO.1167 OF 2014
WITH
CIVIL APPLICATION NO.1408 OF 2014
IN
APPEAL FROM ORDER NO.1167 OF 2014

Ajay Balkrishna Sharma ... Appellant
V/s.
M/s. Maharshi Construction Pvt. Ltd. & Ors. ...Respondents

Mr. Ashutosh Kaushik i/b. M/s. Kaushik & Co. for the Appellant.
Mr. Mohan Konade for Respondent No.2.

CORAM: K.K. TATED, J.
DATED : JANUARY 6, 2015

PC. :

1. Heard the learned counsel for the parties. By this Appeal from Order, the Appellant original Plaintiff challenges the order dated 04/10/2014 passed by the Bombay City Civil Court, Borivali Division at Dindoshi in draft Notice of Motion in Short Cause Suit No.1555/2014 rejecting the Appellant's prayer in terms of prayer clauses (a) and (c) of the Notice of Motion.

2. It is the contention of the learned counsel for the Appellant that the Trial Court categorically held that the suit property was belonging to his father and therefore, the court should have granted ad-interim relief in terms of prayer clauses (a) and (c) of the draft Notice of Motion i.e. restraining from carrying out any construction activities and also using or exploring TDR and FSI of the suit property.

3. On the other hand, the learned counsel for the Respondent submits that the suit property was purchased by Respondent No.2 by conveyance dated 17/02/2012 thereafter they demolished the suit structure on 01/06/2013 and started construction. He further submits that, in any case, the Trial Court has already restrained Respondent No.2 from creating any third party right, title and interest in respect of the suit property.

4. Considering the submissions made by the learned counsel for the parties, the Notice of Motion is pending for hearing and final disposal on its own merits. The Trial Court has restrained the Respondents from creating any third party right, title and interest in respect of the suit property. It is to be noted that the suit structure is demolished on 01/06/2013 and started construction. The present suit is filed by the Plaintiff in the year 2014. Considering this fact, I do not find any reason to interfere with the order passed by the Trial Court. Hence, the Appeal from Order stands rejected.

5. In view of rejection of the Appeal from Order, Civil Application does not survive. Hence, same stands dismissed as infructuous.

6. It is needless to state that the Trial Court shall decide the Notice of Motion on its own merits, without being influenced by the observations made hereinabove.

(K.K. TATED, J.)