

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 1143 OF 2014****IN****NOTICE OF MOTION NO. 3945 OF 2014****IN****B.C.C.C.SHORT CAUSE SUIT NO. 2824 OF 2014****ALONGWITH****CIVIL APPLICATION NO. 1380 OF 2014****IN****APPEAL FROM ORDER NO. 1143 OF 2014****IN****NOTICE OF MOTION NO. 3945 OF 2014****IN****B.C.C.C.SHORT CAUSE SUIT NO. 2824 OF 2014****Jagannath Manjunath Ganiga****..... Appellant****VERSUS****M/s.Lokhandwala Builders & Ors.****..... Respondents**

Mr.Shoaib Memon for the Appellant.

Mr.Anil Rao for Respondent No.1.

Mr.Rajan Pawar, AGP for Respondent Nos. 3 and 4.

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

Learned counsel appearing for the appellant on instruction states that there are certain cars of his customers which are lying in the suit premises and seeks permission to remove those cars. Learned counsel appearing for the respondent no.1 states that he will allow the appellant to remove those cars and would open the lock put in the premises for a limited purpose of allowing the appellant to remove the cars of his customers without prejudice to the rights and contentions of

both the parties. The appellant has agreed to remove the said cars within two weeks from today. The respondent no.1 shall inform the appellant in advance as to when such cars can be removed by the appellant.

2. Insofar as the impugned order passed by the learned trial judge is concerned, learned counsel appearing for the appellant on instruction states that he has no objection if notice of motion itself is heard by the learned trial judge. He however states that the appellant be permitted to make an application for appointment of the Court Commissioner. Appellant is permitted to file such application. If any such application is filed by the appellant, the trial judge shall dispose of the said application also on its own merits.

3. It is made clear that the application for appointment of the Court Commissioner shall be heard by the learned trial judge before disposal of the notice of motion. The learned trial judge shall dispose of the notice of motion on its own merits without being influenced by the observations made in the interim order which observations are prima facie.

4. The notice of motion as well as the application for appointment of the Court Commissioner shall be disposed of expeditiously. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]