

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11531 OF 2014

Empress Park Construction Pvt. Ltd.	]
a Company registered under the	]
Companies Act, 1956, having its	]
Registered Office at 102/Linkway	]
Co-operative Housing Society, 14 th	]
Road, Khar (West), Mumbai – 400 052	]
(Address has been incorrectly shown	]
as : Salgaon, Boisar (W), Taluka	]
Palghar, Dist. Thane, in the cause	]
title of Misc. Civil Appeal No.20/2014	]
& Regular Civil Suit No.68 of 2014	]
Through its Director Kashif Maredia	].... Petitioner
Age 31 years, Occu : Business	](Org. Respondent No.3
R/at :	]Org. Defendant No.3)

versus

- | | | |
|----|--|---|
| 1] | Smt. Firoja (Pillo) F. Irani alias
Smt. Pillo Maneksha Irani, Age 82 yrs
Occupation – Business |]
]
]
] |
| 2] | Smt.Bano J. Sumayya Irani alias
Bano Maneksha Irani, Age 78 years
Occupation : Business
Respondents 1 & 2 both residing at
13/11, Rustur Baug, Building No.13
Sant Savta Marg, Byculla, Mumbai-27 |]
]
]
]
]
]
] |
| 3] | Ardeshar Maneksha Irani
Alias Mubaraki, Age 74 years
Occupation : Business |]
]
]
] |
| 4] | Yohan Ardeshar Irani alias Mubaraki
Age 44 years, Occupation Business
Both residing at Maneksha Farm,
Post TAPS Colony, Salgaon
Boisar(W), Tal. Palghar, Dist.Thane]1&2 |]..... Respondents.
](Resp.1 & 2 are the Org.
] Appellants/Org.Plfs.Resp.
]Nos.3&4 are org.Resp.Nos.
]& Org.Def.Nos.1&2.) |

Mr. P S Dani, Senior Advocate with Mrs.Jai Kanade i/by Mr. P M Tilak for the Petitioner.

Mr. Mohan Pungliya a/w Mr. Y N Adhia for the Respondent No.1.

Mr. Mohan Pungliya a/w Mr. Neel Pungliya for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 23rd September 2015

ORAL JUDGMENT

1 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The above Petition takes exception to the order dated 16/10/2014 passed by the learned District Judge-1 Palghar by which order the Civil Misc. Application No.31 of 2014 filed by the Petitioner herein came to be dismissed.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Respondent Nos.1 and 2 are the original Plaintiffs who have filed the suit in question for simplicitor injunction to restrain the Defendants i.e. the Respondent Nos.3 and 4 herein from alienating the suit properties. They have also filed an application under Order II Rule 2 of the Code of Civil Procedure for seeking partition of the various properties belonging to the family of the Plaintiffs and the Defendant Nos.1 and 2. It is not necessary to dilate further on the said aspect for the purposes of the present Petition. Suffice it would be to state that an application for temporary

injunction came to be filed by the Respondent Nos.1 and 2 which application came to be rejected by the learned Civil Judge, Junior Division, Palghar by order dated 3/5/2014 which resulted in the Respondent Nos.1 and 2 filing Misc. Civil Appeal No.20 of 2014 before the Lower Appellate Court i.e. before the learned District Judge-1, Palghar. The said Appeal came to be allowed and resultantly the order dated 3/5/2014 rejecting the application (Exhibit 5) came to be set aside and in turn the said application came to be allowed and the Defendant Nos.1 to 3 were restrained from creating any third party interest, making any construction in the suit properties and also from obstructing the possession of the Plaintiff over the suit properties.

4 In so far as the Petitioner herein is concerned, it is the Defendant No.3 in the suit in question i.e. Regular Civil Suit No.68 of 2014. There is a controversy as to whether the suit summons as well as the notice on the application Exhibit 5 were served upon the Defendant No.3 i.e. the Petitioner herein. However, the said aspect need not be gone into for the purposes of the present Petition as the application (Exhibit 5) was rejected by the Trial Court. It is the notice of the Appeal around which the controversy is centered around in the present Petition. In so far as the notice of the Appeal is concerned, the bailiff's report indicates that the same was sought to be served on the Defendant No.3 at the address shown as Maneksha Farm, Palghar Dist. Palghar. However, the said address which is appearing in the plaint is not the registered

address of the Defendant No.3 nor the address of its office, the Defendant No.3 is a private limited company. In terms of Order XX of the Code of Civil Procedure in so far as the corporation is concerned, the said provision obligates the service to be effected at the places mentioned in the said provision. In so far as the address i.e. Maneksha Farm, Palghar is concerned, the said address is neither the address where the office of the Defendant No.3 is situated nor the registered address of the Defendant No.3 i.e. the Petitioner herein which, as indicated above, is a private limited company.

5 As indicated above, the Lower Appellate Court allowed the application for injunction and granted injunction in terms of what has been stated in the earlier part of this order. The Defendant No.3 i.e. the Petitioner herein filed an application for setting aside the order passed by the Lower Appellate Court granting injunction on the ground that, the summons/notice of the Appeal was not served on the Defendant No.3. The ground that the address on which the notice is purportedly served is neither the registered address nor the office address of the Defendant No.3 was sought to be highlighted. The Lower Appellate Court did not countenance the said objection and rejected the application filed by the Defendant No.3 . Since the Defendant No.3 is claiming through the Defendant Nos.1 and 2 and since the Defendant Nos.1 and 2 were served, the grounds raised for setting aside the said order could not be countenanced.

6 The above Petition was heard for sometime. During the course of the hearing of the above Petition, the learned counsel Shri Pungliya appearing for the original Plaintiffs fairly stated that in view of the fact that there is a controversy sought to be raised as regards whether the notice of the Appeal was served on the Petitioner herein i.e. the Defendant No.3, the Plaintiffs have no objection to the order passed by the Lower Appellate Court being set aside and the matter being relegated back to the Lower Appellate Court for a de-novo consideration of the said Misc. Civil Appeal No.20 of 2014 but the same should be directed to be done within a particular time frame.

7 In view of the aforesaid statement made by the learned counsel Shri Pungliya, it is not necessary to give detailed reasons for setting aside the order dated 19/06/2014. The Misc. Civil Application No.31 of 2014 would stand allowed. Resultantly the order impugned in the above Petition i.e. the order dated 16/10/2014 would stand quashed and set aside. Consequently the order dated 19/6/2014 passed by the Lower Appellate Court allowing the said Appeal and granting injunction would also stand set aside and the matter is relegated back to the Lower Appellate Court for a denovo consideration of the said Misc. Civil Appeal No.20 of 2014. On remand, the Misc. Civil Appeal No.20 of 2014 to be heard and decided by the Lower Appellate Court within a period of 8 weeks of the parties appearing before the Lower Appellate Court.

The parties to appear before the Lower Appellate Court on 5/10/2015 at 3.00 pm. The Lower Appellate Court to decide the said Misc. Civil Appeal within the outer limit as stipulated by this Court. The learned Senior Counsel for the Petitioner Shri Dani as also the learned counsel appearing for the Respondent No.1 and Respondent No.2 Shri Mohan Pungliya assure this Court that no unnecessary adjournments would be sought and that they would cooperate in the disposal of the said Misc. Civil Appeal in terms of the time frame fixed by the instant order. The parties are also directed to maintain status quo as on 19/06/2014 which would operate pending the consideration of the said Misc. Civil Appeal No.20 of 2014. The learned Senior Counsel for the Petitioner Shri Dani states that the reply to the Application Exhibit 5 would be filed on 5/10/2015. Needless to state that the said Misc. Civil Appeal No.20 of 2014 would be decided on its own merits and in accordance with law without influenced by the impugned order or the instant order and by giving proper opportunity to the parties. All the contentions of the parties are kept open for being agitated before the Lower Appellate Court. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Judgment.