

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.189 OF 2015
ALONGWITH
CIVIL APPLICATION NO.1283 OF 2015

Rajendra J Bansal ... Appellant
Vs.
M/s. Zenal Construction Pvt. Ltd. & Anr. ... Respondents

Y K Tiwari, Adv. a/w. Mukesh S Pandey, Adv. for appellant.
Kalpesh Joshi, Adv. for respondent Nos.1 and 2.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 21st September, 2015.

P.C. :

1. Rule. Returnable forthwith.
2. The appellant has challenged the order of Bombay City Civil Court dated 12th November, 2014 dismissing the appellant's Notice of Motion for the interim relief of making payments of certain amounts. The payments that is demanded is the arrears of compensation towards alternate accommodation as per agreement dated 10th November, 2004 to the extent of Rs.15 lacs and the damages to the extent of Rs.10 lacs with interest @ 18% pa from 1st June, 2011 onwards.
3. Damages, of course, cannot be granted and are not claimed in the appeal. The compensation towards alternate accommodation is pressed.
4. This is refused on the ground that the defence of the defendants that the construction has been stopped on account of the

suit filed by the purchasers of wings A and B of the building resulted in an injunction. Thereafter that suit has been decreed in favour of the purchasers of the flats in wings A & B and first appeal therefrom is filed. It would, therefore, take up several years before any construction may commence and continue. The relief of injunction granted by this Court is against construction contrary to the plan as sanctioned on 5th October, 2002 as also any construction beyond wings A & B. Wings A & B are already constructed. Hence respondents cannot put up any further construction. Hence the respondents cannot carry out any construction and, therefore, cannot make any payments ad infinitum. That defence has been correctly accepted.

5. It is for the appellant to work out the modalities of construction so as not to be counterproductive of his legal rights. If the developer cannot carry on any construction pending the suit due to injunction granted by this Court, which would continue for number of years, he cannot be directed to make payment of compensation for alternate accommodation for an unreasonable period of time before construction can commence.

6. Thus seen the impugned order cannot be faulted.

7. Counsel on behalf of the respondent states that the respondents shall not create any third party rights in respect of the permanent alternate accommodation which is required to be given to the appellant. Hence an order in that behalf is required to be passed.

8. The respondents shall not sell, alienate, encumber, transfer or create any third party rights in respect of the permanent alternate

accommodation which is agreed to be given to the appellant pending the suit in the Trial Court.

9. Appeal from Order as also Civil Application are disposed of accordingly.

(ROSHAN DALVI, J.)

C E R T I F I C A T E

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