

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

**APPEAL FROM ORDER NO.26 OF 2015
WITH
CIVIL APPLICATION NO.807 OF 2015**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.Ajay Talreja for the appellant

Mr.Harinder Toor a/w Ms.Krutika Pokale with
Ms.Dhvani Bhatt i/b M/s.S.K.Legal and
Associate for the respondent no.2

CORAM : K.K.TATED, J.

DATED : 14/07/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This Appeal from Order is preferred by defendant no.2 challenging the order dated 12.12.2014 passed by Bombay City Civil Court, Mumbai in Notice of Motion No.2914 of 2014 granting ad-interim relief in terms of prayer clause (a) and (b) restraining the appellant defendant no.2 from disturbing the plaintiffs' possession and or enjoyment of the open space as described in prayer clause (a) of the Notice of Motion and exclusive use of terrace as described in prayer clause (b) of the Notice of Motion.

3 The learned counsel for the defendant no.2 submits that it was specifically stated in sanction plan of the building that parking space admeasuring 40' x 30' in front of Shakti Sadan Building is the open space. He submits that plaintiffs are claiming exclusive use and occupation of the same. He submits that if any particular space is shown as parking space in sanction plan then the Society has right to allot the same in favour of their members. Therefore ad-interim relief granted by Trial Court is required to be set aside.

4 On the other hand, the learned counsel for the respondent nos.1 and 2 original plaintiffs vehemently opposed the present Appeal from Order. He submits that the plaintiffs are the owner of the suit plot where these two buildings were constructed. He submits that it was specifically stated in the clause 11 of the agreement for sale that the plaintiffs are reserving the said open space and terrace as their exclusive property. He further submits that till today the conveyance is not executed in favour of the Society. Therefore, Society has no right, title and interest in the said open space and terrace. He further submits that till today the Notice of Motion is pending for hearing and final disposal.

5 The learned counsel for the plaintiffs submits

that during the pendency of the present Appeal from Order original defendant no.2 violated impugned order passed by Trial Court dated 12.12.2014. Hence, plaintiff preferred Notice of Motion No.830 of 2014 under Order 39 Rule 2a of the Code of Civil Procedure, 1908. He further submits that in any case the Trial Court has considered all the documents on record and after giving the reason granted ad-interim relief in favour of the plaintiffs. He submits that in view of the Apex Court judgment in the matter of *Mohd.Mehtab Khan and Others v. Khushnuma Ibrahim Khan and Others* reported in 2013 (9) SCC 221, normally court should not interfere in ad-interim relief unless and until court finds any palpably incorrect or untenable reasons given by the Trial Court. On the basis of these submissions the learned counsel for the plaintiffs submits that there is no substance in the present Appeal from Order and same be dismissed.

6 I have heard both the sides at length. It is to be noted that in the present proceeding, the Trial Court after considering the documents on record prima facie, found that the plaintiffs have made out a case for ad-interim relief. That ad-interim relief was also violated by defendant no.2. Hence, plaintiff preferred Notice of Motion No.830 of 2015 under Order 39 Rule 2A of the Code of Civil

Procedure, 1908.

7 Considering these facts and the law declared by the Apex Court in the matter of Mohd.Mehtab Khan and Others v. Khushnuma Ibrahim Khan and Others (Supra), I am of the opinion that in the interest of Justice, hearing of both the Notices of Motion be expedited. Hence, following order:

- a) Appeal from Order stands rejected.
- b) Hearing of Notice of Motion No.2914 of 2014 and 830 of 2015 pending before Trial Court is expedited.
- c) This court expects that the Trial Court to decide both the Notices of Motion as early as possible but in any case on or before 31.12.2015.
- d) In view thereof, Civil Application does not survive. The same is also dismissed as infructuous.

(K.K.TATED, J.)