

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL NO. 162 OF 2015
IN
NOTICE OF MOTION NO.1186 OF 2014
IN
SUIT NO. 2601 OF 2012
WITH
NOTICE OF MOTION NO. 366 OF 2015
IN
APPEAL NO. 162 OF 2015
IN
SUIT NO. 2601 OF 2012
WITH
CHAMBER SUMMONS (L) No. 1659 of 2014
WITH
CHAMBER SUMMONS (L) No. 1769 of 2014

Ardeshir B. Dubash and 4 others

..Appellants.

Versus

Girnar Colonizer Pvt Ltd & Ors

..Respondents.

Mr I.M. Chagla, Senior Counsel a/with Mr F.F.Devitre, Senior Counsel, Ms Rashme Mulla – Feroze, Mr Rashad Parbhoo, Ms Geetanjali Joshi i/by Doijode Ass for the appellant.

Mr Virendra Tulzapurkar, Senior Counsel a/with Mr Vaibhav Joglekar i/by Durgaprasad Sabnis for Respondent No.1.

Mr Virendra Tulzapurkar, Senior Counsel a/with Mr Vaibhav

Joglekar i/by Mr Mohan Rao for Respondent No.2.

Mr Virag Tulzapurkar, Senior Counsel a/with Mr Nikhil Sakhardande a/with Mr Desai i/by Wadia Gandhi for Respondent Nos. 3 and 4.

Mr G.D.Utangale i/by Utangale & Co. for respondent No.6.

Mr Suraj Iyer i/by Ganesh & Co. for the Intervener in Application No. CHS (L) No.1659 of 2014, CHS (L) No. 1769 of 2014.

**CORAM : V.M.KANADE &
A.R. JOSHI, JJ.**

DATE : 27th March, 2015.

P.C.

1 Heard Mr Chagla, learned Senior Counsel appearing on behalf of the appellants and Mr Virendra Tulzapurkar, the learned Senior Counsel appearing on behalf of the respondents.

2 The appellants are aggrieved by an order of the learned Single Judge refusing to grant ad-interim relief as prayed for. Hearing of the motion has already been expedited. The appellants are the owners of the property which is situated at Mahim Dharavi. The said property has been excluded by the Slum Redevelopment Authority (SRA) from the Dharavi Slum Redevelopment Scheme. Respondent No.1 is the lessee in whose

favour a lease deed was executed by the appellants in the year 1938. The lease deed specifically confers right on Respondent No.1 to construct a new building. When the IOD was issued by the Slum Redevelopment Authority under Section 33 (14) of the D.C.R. Rules, a specific condition was imposed on Respondent No.1 and/or an assignee to obtain No Objection Certificate (NOC) from the owner. Admittedly, this NOC has not been obtained.

3 The learned Single Judge declined to grant any ad-interim relief on the ground of delay on the part of the appellants who are the plaintiffs. In our view, since the appeal is filed against the order refusing to grant ad-interim relief and since sufficient protection has been granted to the appellants/plaintiffs, without going into the question of correctness or otherwise of the refusal to grant ad-interim relief, it will be advisable to direct the learned Single Judge to hear the Notice of Motion including the issue of preliminary objection which was raised under Section 9-A of the C.P.C. as expeditiously as possible and decide the same on or before 30th June, 2015. All contentions of both the parties are kept open. SRA is also directed to take such steps which are within

their control to ensure all the conditions which were imposed by them in the IOD are duly complied.

4 The appeal is disposed of in the aforesaid terms.

5 Notice of Motion No. 366 of 2015, Chamber Summons (L) No. 1659 of 2014 and Chamber Summons (L) No. 1769 of 2014 taken out by the respective applicants also stand disposed of.

6 We have made suggestion to the parties whether the matter can be referred to mediation. If consent is given by both the parties, then, the matter can be referred to the mediator.

(A.R. JOSHI, J)

(V.M.KANADE,J)