

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 72 OF 2016

SHRI. SUNNY SHASHI KAMAT PANJIKAR
AND ANR.,

... Appellants

Versus

SHRI. SHRIRAM G. PARULEKAR AND
ANR.,

... Respondents

Mr. Deep D. Shirodkar, Advocate for the appellants.

Mr. J. Vaz, Advocate for the respondents.

Coram:- C. V. BHADANG, J.

Date:- 15th December, 2016

P.C.

Heard the learned Counsel for the appellants and the learned Counsel for the respondents, for some time.

2. The appellants, who are the defendants before the Trial Court, are challenging the order dated 02/12/2016, by which, an interim ex-parte injunction has been granted in the following terms :

"Heard Ld. Adv. Shri Bhagi. Perused records. Plaintiff has prima facie shown that the defendants no.1 & 2 have undertaken construction in plot no.3 surveyed under no.8/8 of village Veling, which is not in accordance with Law. Hence, defendants no.1 & 2 are restrained from carrying out

further construction in the plot no.3 of survey no.8/8 of village Veling until the next date of hearing. Issue notice to defendants returnable on next date."

3. The learned Trial Court has made the notice returnable on 20/12/2016.

4. It is submitted by the learned Counsel for the appellants that the construction of the suit house is practically complete. It is submitted that the alleged cause of action for filing the suit has accrued to the respondents in February, 2016 and the suit is filed in December, 2016. Thus, there are laches in approaching the Court. It is submitted that in such circumstances, the learned Trial Court ought not to have granted ex-parte ad interim injunction in the absence of a finding that delay would defeat justice. On behalf of the appellants, reliance is placed on the decision of the Supreme Court in the case of RAMRAMESHWARI DEVI AND OTHERS VS. NIRMALA DEVI AND OTHERS; [(2011)8 SCC 249] and in particular, paras 44 to 46 thereof, in order to submit that normally, the Court should be extremely careful while granting ex-parte ad interim injunction. It is submitted that on account of ad interim injunction being granted, the appellants have been unable to complete the finishing work, including fixing of doors, etc., which would consequently cause delay in occupation of the

house.

5. On the contrary, it is submitted by Shri Vaz, the learned Counsel for the respondents that there was earlier a suit filed against the father of the respondents, in which an injunction was granted. It is submitted that now the appellants are undertaking the construction, which is in violation of building bye-laws and construction licence and it is also likely to affect the access to the existing Survey No.8/8A of the respondents. The learned Counsel disputes that the construction is nearing completion.

6. On hearing the learned Counsel for the parties and on perusal of the record, I do not find that any interference is called for in the impugned order. Normally, this Court would be slow in interfering with an ad interim order, where a party can enter appearance before the Trial Court and get the application for Temporary Injunction decided. In the present case, the suit is fixed on 20/12/2016 and in view of the observations of the Hon'ble Supreme Court in the case of RAMRAMESHWARI DEVI (supra), the application for Temporary Injunction can be expedited. The learned Counsel for the appellants undertakes to file reply to the application for Temporary Injunction, along with documents, if any, on 20/12/2016.

7. In the result, the appeal is disposed of with the direction to

the Trial Court, to decide the application for Temporary Injunction as expeditiously as possible and in any event, within two weeks from 20/12/2016. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA