

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 129 OF 2016****ALONGWITH****CIVIL APPLICATION NO. 176 OF 2016****IN****APPEAL FROM ORDER NO. 129 OF 2016****Cornelian Properties Private Limited****..... Appellant****VERSUS****Sudeep Mahendra Shah & Ors.****..... Respondents**

Mr.A.Khandeparkar, i/b. Mr.Amogh Karandikar for the Appellant.

Ms.Rekha Safari for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 16th FEBRUARY, 2016

P.C.

By this appeal from order, the appellant has impugned the order dated 4th February, 2016 passed by the learned trial judge thereby modifying the order dated 29th January, 2016. Mr.Khandeparkar, learned counsel for the appellant invited my attention to the report submitted by the Court Commissioner pointing out that some construction was going on by the defendant no.1 in the suit premises. The learned trial judge has passed an order directing the defendant nos. 1 and 2 to maintain status quo thereby stopping all construction activities till filing reply. The matter was directed to be placed on board on 9th February, 2016 for filing reply. Admittedly none of the defendants have filed any reply to the notice of motion.

2. It is submitted by the learned counsel that on 4th February, 2016, the

defendant nos. 1 and 2 without issuing any notice to the plaintiffs or its advocate had applied for modification of the order dated 29th January, 2016. The learned trial judge has modified the order dated 29th January, 2016 without hearing the plaintiffs' advocate.

3. This court has granted ad-interim stay of the said order dated 4th February, 2016.

4. Learned counsel appearing for the respondent nos. 1 and 2 submits that by this said order dated 4th February, 2016, the learned trial judge has only permitted the respondent nos. 1 and 2 from carrying out tenantable repairs i.e. plastering, change of the tiles etc. and are not permitted to carry out any construction. She submits that in view of the ad-interim order passed by this court on 9th February, 2016, respondent nos. 1 and 2 are not even permitted to carry out tenantable repairs.

5. A perusal of the Commissioner's Report prima facie indicates that respondent nos. 1 and 2 were carrying out various construction activities which were of substantive nature and thus the learned trial judge passed an order of maintaining status quo thereby directing the respondents to stop for construction activities till filing of the reply. The respondents however have not filed any reply.

6. In my prima facie view, the learned trial judge could not have modified the order dated 29th January, 2016 without hearing the plaintiffs.

7. In my view interest of justice would be met with if the respondents are directed to file affidavit in reply which shall be filed within one week from today

and a copy thereof shall be served upon the appellants' advocate simultaneously. The appellants shall file rejoinder within one week from the date of service of affidavit in reply.

8. Ad-interim order granted by this court to continue till disposal of the notice of motion.

9. The learned trial judge shall make an endeavour to dispose of the notice of motion within four weeks from the date of completion of the pleadings as directed aforesaid.

10. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]