

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.497 OF 2015

WITH

CIVIL APPLICATION NO.633 OF 2015

Vilas Pandharinath Goregaonkar.	]	
Through Mr. Ashok Kumar Sitaram Pasi,	]	
Constituted Attorney.	]	... Appellant/ (Orig. Plaintiff)

Versus

Damodar Nemchand Dharavat & Ors.	]	... Respondents
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Mr. P. K. Dhakephalkar, Senior Advocate, a/w Mr. D. A. Dwivedi for Appellant.

Mr. A. G. Damle, Senior Advocate, a/w Mr. A. S. Singh for Respondent Nos.7 and 8.

Mr. Abhijit Singh i/b Mr. A. R. Mishra for Respondent No.10.

Mr. S. P. Thorat for Respondent No.13.

CORAM :- R. M. SAVANT, J.

DATE :- JULY 21, 2016

P. C. :-

1. The above Appeal from Order takes exception to the order dated 29/01/2015 passed by the learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order the Notice of Motion filed by the appellant/original plaintiff came to be dismissed. The learned Counsel for parties i.e. Mr. D. A. Dwivedi appearing for

the appellant/original plaintiff and Mr. A. G. Damle, learned Senior Advocate appearing on behalf of respondent nos.7 and 8 who are the main contesting defendants as they are developing the property, on instructions of their respective clients, state that they have no objection to the impugned order dated 29/01/2015 being set aside and the matter being relegated back to the City Civil Court for a *de novo* consideration of the Notice of Motion. This consensus is in view of the fact that both the learned Counsel are *ad-idem* that the order is *sans* the reasons required to be given whilst allowing or rejecting an application for temporary injunction. In view of the said statement made by the learned Counsel for parties, it is not necessary for this Court to give detailed reasons for setting aside the impugned order. The impugned order would accordingly stand set aside and the matter would stand remitted back to the Trial Court for *de novo* consideration of the Notice of Motion.

2. In the above Appeal from Order, an affidavit dated 30/06/2016 has been filed on behalf of respondent nos.7 and 8. Paragraphs 5 and 6 are relevant and reproduced hereinunder for the sake of ready reference :-

“5. I state that the construction of the composite building no.2 is complete. These Respondents shall not carry out any construction on any part of CTS no.88.

6. I state above, out of the total area of 1829.20 sq.mtrs. only 1110.58 sq.mtrs. have been utilized by these Respondents, thus leaving a balance of 718.62 sq.mtrs. I state before this Hon'ble Court that these Respondents have not and shall not utilize such balance F.S.I. Of 718.62 sq.mtrs. in any manner whatsoever, till the suit is decided by the Hon'ble City Civil Court.”

3. Hence pending consideration of the Notice of Motion for remand, the undertaking mentioned in paras 5 and 6 would continue to operate. The appellant is at liberty to file a further affidavit dealing with the contentions raised in the affidavit dated 30/06/2016 filed in this Court. If any such further affidavit is filed, the appellant/plaintiff may annex the affidavit dated 30/06/2016 filed in this Court to the said affidavit. If in the additional affidavit any further new facts are brought on record, the respondent nos.7 and 8 would be entitled to file their reply in respect of the said facts.

4. The learned Counsel for appellant/plaintiff states that the said additional affidavit will be filed within one week. Respondent Nos.7 and 8 may file their rejoinder within one week thereafter. Since

this is the second round, the Trial Court is directed to hear and decide the Notice of Motion latest by 30/09/2016.

5. With the aforesaid directions, the Appeal from Order is disposed of.

6. In view of the disposal of the Appeal from Order, the Civil Application does not survive and the same to accordingly stand disposed of as such.

(R. M. SAVANT, J.)