

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

***CIVIL APPLICATION NO. 910 OF 2016
IN
FIRST APPEAL NO. 1072 OF 2013***

Nilesh Dharampal Hanswani ... Applicant

Vs

1. Sarang Hotel Pvt. Ltd. & Ors, ... Respondents

Ms. Jai Kanade i/b Mr. Sumit Kothari for the Applicant.

Mr. R.V. Govilkar with Mr. Mihir R. Govilkar for the Respondent
Nos.1 to 10.

***CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.***

WEDNESDAY, 30TH NOVEMBER, 2016

P.C. :

1. After hearing both sides on this application we are of the opinion that the Minutes of the Order based on which the earlier Civil Application of this very applicant was disposed of, sufficiently protects the rights, if any, as also the equities. The applicant seeks a restraint against construction on the suit property. That is not a relief to which *prima facie* the applicant is entitled in the given facts and circumstances bearing in mind the

Consent Minutes. The Consent Minutes disposed of the application for interim relief of this very applicant. That was an order passed when the First Appeal was admitted. We do not see any change in the circumstance so as to impose any additional burden.

2. At this stage we must also dispose of one contention which is raised by Mr. Govilkar based on the affidavit-in-reply to this Civil Application. After relying upon that affidavit and particularly the fact of the huge investment made in the property, it is submitted that this Court having not restrained any construction activity, it should further not continue the Minutes of the Order or the arrangement therein for that would mean a construction activity can be carried out on the suit property, but its alienation is impossible and impermissible.

3. Today, the situation at site is that the construction activity has recently commenced. This fact is also disputed by the applicant. Apart therefrom, it is not completed. There is no record of any agreement executed with third parties so as to enable them to claim any flats or commercial structures / shops /

offices. In these circumstances, we do not think that the contesting respondents can be relieved of the undertaking given by them to this Court at this stage. Presently, there are no equities in the contesting respondent's favour. The order passed on 25th September, 2016, in Civil Application No. 348 of 2016 which was moved by this very contesting respondent – Deoram Parvat Sathe (original respondent No.7) this Court has said that the construction activity can go on. It can continue subject to the Civil Application No.910 of 2016 being decided and its final outcome. Now, Civil Application No.910 of 2016 is before us. The respondent No.7's Civil Application No.348 of 2016 has been disposed of by the order passed on 25th February, 2016. To our mind, once we have not imposed any additional restraints or restrictions on respondent No.7, the suit property, including the larger properties being allowed to be developed, then, we do not think that we can accede to Mr. Govilkar's submission. More so, when an attempt to get out of the undertaking was not accepted in the earlier round. Presently, when the construction is yet to be completed and there being no record of any agreements with third parties, it would not be proper to grant any relief in favour of respondent No.7. The above contention in the Civil Application

by the original appellant/applicant stands disposed of. It would be open for the respondent No.7 to seek such relief as is permissible in law but by an independent application in future.

4. The Civil Application is misconceived and is dismissed.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.