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

WRIT PETITION NO. 4352 OF 2015

M/s. Chougule Hosmani Construction. ... Petitioner.

V/s.

Smt. Sunita Mahesh Fadtare. ... Respondent.

Mr. S.S. Patwardhan for the Petitioner.
None for the Respondent.

CORAM : N.M. Jamdar, J.

20 September, 2016.

Oral Order :-

Heard the learned Counsel for the Petitioner.

2. The Petitioner has challenged the order passed by the learned District Judge, Kolhapur in Misc. Civil Appeal No. 255 of 2014 dated 12 February 2015. By the impugned order the learned District Judge has set aside the grant of temporary injunction by the learned Civil Judge. It is the case of the Petitioner that there were nine structures of ground plus one existing of which the Petitioner had demolished the first floor and at that time no objection was raised by the Respondent and when the Petitioner has sought to

reconstruct the first floor, the Respondent had objected to it because of which the Suit had to be filed.

3. At this prima-facie state it is not shown that the right of the Respondent in respect of Shop No.1 has anyway being acquired by the Petitioner neither it is shown that the express consent of the Respondent was sought before proceeding for demolition. Therefore, what the Petitioner seeks in this Petition is an order of injunction that Respondent No.1, the owner of the shop, should not object to a construction above his shop. In the light of what is stated above, it is not possible to grant such mandatory relief which will decree the suit itself overriding the rights of the Respondent which are yet to be adjudicated. However, considering the fact that construction is stated to be put up on the other shops excluding the shop in possession of the Respondent, liberty to the Petitioner to apply for early disposal of the suit. The learned Civil Judge may consider, if there are no earlier time bound commitments, to dispose of the Suit within period of one year from today. The Writ Petition is disposed of.

(N.M. Jamdar, J.)