

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER (STAMP) NO. 9366 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9367 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9366 OF 2016

Mr. Lalpratap Girjashankar Singh ...Appellant

Versus

M/s. Atul Projects India Ltd. ...Respondent

.....

Mr. R. M. Vasudeo i/b Mr. Nilesh Parmar for the Respondent.

CORAM : G. S. KULKARNI, J.

DATE : 21st APRIL, 2016.

P. C. :

1. Not on board. Taken on board.
2. Though a production precipe has been moved, none appears for the appellant. Mr. R. M. Vasudeo, learned counsel appears for the respondent/defendant.
3. I have perused the impugned order, which is an ad interim order, whereby ad interim reliefs as prayed for in the Notice of Motion filed by the appellant/plaintiff has been rejected by the learned Trial Judge, for the reasons which are recorded in the order and more particularly in para 2 of the impugned order.

4. I have heard learned counsel for the respondent who has pointed out that the appellant had approached the City Civil Court, Mumbai, in this new suit totally suppressing the facts pertaining to earlier litigation namely Suit No. 3002 of 2013 which was unconditionally withdrawn by the appellant/plaintiff. The learned counsel for the respondent also states that an amount of Rs.25 lacs was paid to the appellant before demolition of the two suit structures as paid in pursuance of the Consent Terms which were arrived between the parties. A reference to the Consent Terms has been made in the order dated 30.01.2016 passed by the City Civil Court in the earlier suit between the parties. The order reads thus:

*The parties have filed Consent Terms. However, the Consent Terms seems to be in respect of the matters beyond the scope of the suit and they are in respect of receipt of consideration by the plaintiff in lieu of the suit claim and the suit is not valued in accordance thereof and Court fees is also not paid as per that valuation. It shall be taken on record only after the suit is properly valued and proper Court fees is paid. Therefore, these Consent Terms are not taken on record for the present and on only for identification it is marked as **Article 'A'** The advocate for plaintiff has filed Exh.11 - pursis. Defendant Nos. 1 and 2 to file their say on it. Say filed by both the defendants. Defendant No.2 has no objection for disposal of the suit and N/M as withdrawn. Defendant No.1/MMC in its say has stated that it leaves to the matter to the order of the Court. In view of the pursis, Exh.11, and the say of the defendants thereof as above, the Suit is disposed of as withdrawn with cost of defendant No.1. Pending N/M No. 1965/2015 and application Exh.9 also stand disposed of in*

view of disposal of the suit as withdrawn.

5. Learned counsel for the respondent submits that all these facts are neither pointed out before the Trial Court nor in the present appeal which has been filed against rejection of the ad interim relief. In the impugned order the learned Judge has taken these facts into consideration.

6. In the light of the above facts and taking into consideration the impugned order which is an ad interim order, this Appeal from Order is devoid of any merit and thus does not require any interference. The Appeal from Order is accordingly rejected. No order as to costs.

7. In view of the above the Civil Application does not survive and the same stands rejected.

8. Needless to observe that as this Appeal from Order arises out of an ad interim order and the Notice of Motion is pending final disposal, all contentions of the parties on the Notice of Motion are expressly kept open and the learned Trial Judge shall decide the Notice of Motion on its own merits and without being influenced by the observations made in the impugned order.

(G. S. KULKARNI, J.)