

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

***APPEAL FROM ORDER NO. 854 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 1119 OF 2015***

Mrs.Kalpana Shashikant Mali,
Residing at Plot No.88/D/7,
Sagar Co-op. Hsg. Society Ltd.,
Gorai (I), Borivali (W), Mumbai-91. ... Appellant

v/s

- 1 M/s.Sai Vision Cable Network,
Office at Plot No.68/D/1,
Yashomandir Co-op. Hsg. Socy. Ltd.,
Gorai (I), Borivali, Mumbai-400 091.
- 2 Mr.Vipul Rameshchandra Doshi,
Residing at Nav Varsha CHS Ltd.,
Plot No.58/D/6, Gorai Sector-I,
Borivali (W), Mumbai – 400 091. ... Respondents

Mr.Suresh K. Mali i/by Mr.Vishnu L. Chaudhari for the appellant.

Mr.A.N. Narula i/by Jhangiani Narula & Associates for the respondents.

CORAM: N.M. JAMDAR, J.

DATED : 8 MARCH 2016

ORAL ORDER:

By this Appeal, the Appellant challenges the order passed by

the City Civil Court, Dindoshi, Mumbai, dated 24 February 2015, rejecting the Notice of Motion No.2595 of 2012 taken out in Suit No.1971 of 2011.

2 By the Notice of Motion, the Appellant sought three reliefs, firstly, to restrain the Respondents from collecting monthly subscription and charges from the customers in respect of the cable network business; secondly, to restrain the Respondents from selling, transferring or alienating the property and assets of the firm; and thirdly, to direct the Respondents to furnish statement of account and amounts collected from the customers.

3 I have heard learned counsel for the parties.

4 Though the learned counsel for the Appellant has sought to advance various arguments, most of them relate to the merits of the suit. The City Civil Court, *prima facie* observed that the Plaintiff is not entitled to the reliefs prayed for as it appears that the Plaintiff has also taken steps to start a separate business of cable network. It is the case of the Respondents that they have their own separate business of cable network and cannot be directed to either furnish accounts or stop collecting subscriptions from the customers. The adjudication of rival contentions will require evidence. It is informed that the suit is at the stage of recording of evidence. Notice of Motion is of the year 2011 and there is no ad-interim order in favour of the appellant till date. In the circumstances, it will be appropriate if the suit is decided on its own merits without

being influenced by the observations made in the impugned order, which are *prima facie* in nature.

5 The Appeal is accordingly disposed of with the above clarification.

6 It is open to the Appellate to make appropriate application for expeditious disposal of the suit to the Court who will consider the same as per the time schedule available to it.

7 In view of disposal of the Appeal, the civil application is disposed of.

(*N. M. JAMDAR, J.*)