

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER NO. 424 OF 2016
WITH
CIVIL APPLICATION NO. 551 OF 2016
IN
APPEAL FROM ORDER NO. 424 OF 2016

Pankaj Vishnu Hande

...Appellant

Versus

Runwal Homes Pvt. Ltd.

...Respondent

.....

Mr. Siddharth Wakankar i/b Ashutosh Gole for the Appellant.
None for the Respondent.

CORAM : G. S. KULKARNI, J.
DATE : 26th APRIL, 2016.

P. C. :

1. This Appeal from Order has been filed by the appellant/original plaintiff challenging the order dated 20.04.2016 passed on an unregistered Notice of Motion in S. C. Suit No. 895 of 2016 whereby ex parte ad interim protection as prayed by the appellant/plaintiff was refused with a permission to register the Notice of Motion. Learned Trial Judge in the impugned order has observed that the defendants were not served by the appellant/plaintiff with an advance notice of the Notice of Motion as

also the apprehension of creating third party rights in the suit property was also not shown. It is the grievance of the appellant that the observations which are made in para 2 to the extent that the appellant/plaintiff had not approached with clean hands would cause a prejudice to the appellant. It is submitted that the Notice of Motion is required to be heard on its own merits and that the observations made in para 2 of the impugned order should not come in the way of the appellant at the hearing of the Notice of Motion. It is submitted that the appellant would not now give an appropriate notice to the defendants of the hearing of the Notice of Motion which is pending before the Trial Court and the Trial Court should consider the case of the appellant.

2. There is much substance in the contention as urged by the Advocate for the appellant. The Notice of Motion is pending hearing which would be required to be heard and decided by the learned Trial Judge on its own merits and after giving an opportunity to all the parties. It is accordingly directed that the learned Trial Judge shall decide the Notice of Motion being uninfluenced of the observations which are made in the impugned order. In any event the impugned order is ex parte ad interim order and the observations as made in

para 2 to the extent it is observed that '*the plaintiff has not come with clean hands, so ex parte order is not justified*' appears to be not justified without clear reasons being set out in that regard. The Appeal from Order is accordingly disposed by the following order:

- (i) The learned Trial Judge shall decide the Notice of Motion as taken out on behalf of the appellant/plaintiff on its own merits and without being influenced by the observations made in the impugned order dated 20.04.2016 and after giving an opportunity to all the parties to plead their respective case.
- (ii) All contentions of the parties on merits of the case are expressly kept open.
- (iii) The appellant is permitted to approach the Trial Court in the captioned Notice of Motion or for ad interim reliefs as the appellant may feel proper in the facts and circumstances of the case.
- (iv) The Appeal from Order is disposed of in the above terms.
No order as to costs.
- (v) The Civil Application also does not survive and accordingly disposed of.

(G. S. KULKARNI, J.)