

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 138 OF 2016****ALONGWITH****CIVIL APPLICATION NO. 188 OF 2016****IN****APPEAL FROM ORDER NO. 138 OF 2016****Yugdharma Co-operative Housing Society Ltd. Appellants****VERSUS****M/s. Kalpataru Retail Ventures Pvt. Ltd. & Ors. Respondents**

Mr.S.U.Kamdar, Senior Advocate, i/b. Anjana Shah & Co. for the appellants.

Mr.Pravin Samdhani, Senior Advoate, a/w. Ms.Jayshree R., i/b. Mr. Purav Damania for Respondent Nos. 1 and 3.

CORAM : R.D. DHANUKA, J.**DATED : 22nd FEBRUARY, 2016****P.C.**

By this appeal from order, the appellants have impugned the order dated 13th March, 2015 passed by the learned trial judge refusing to grant ad-interim relief in favour of the appellants (original plaintiffs) thereby seeking injunction in respect of the suit property and various other reliefs.

2. Admittedly an action of the respondents of the year 2010 has been challenged by the appellants in the year 2013. The applicants applied for ad-interim relief before the learned trial judge in the year 2015. Ad-interim is rejected by the learned trial judge on 13th March, 2015. No ad-interim order is passed by this court since then in favour of the appellants.

3. A perusal of the record prima facie indicates that the appellants were fully

aware of the resolution passed by the appellant society in which it was discussed and decided that the amalgamation of the plot of the appellants be made with adjoining plot and a common club house shall be constructed. A perusal of the record further prima facie indicates that pursuant to the said resolution, the Honorary Chairman and the Secretary of the appellants society entered into a memorandum of the understanding with the developer.

4. It is the case of the developer that after entering into the said memorandum of the understanding dated 29th May, 2010, the developer has implemented the said MOU and has constructed additional wing and has already sold the flats to the third parties. It is submitted by the learned senior counsel for the developer that the existing club house was already demolished in the year 2010. He submits that the Municipal Corporation has now already granted occupation certificate in respect of the new building constructed by the developer including the larger club house. It is the case of the developer that some of the members of the appellants society are availing of the facilities of the larger club house.

5. A perusal of the plaint filed by the appellants society clearly indicates that the appellants were fully aware of the resolution passed by the appellants society. A copy of the said resolution is annexed by the appellants themselves in the plaint. In view of the reasons recorded aforesaid, I do not find any infirmity in the order passed by the learned trial judge refusing to grant ad-interim relief.

6. Learned counsel appearing for parties have informed this court that in view of the developer raising an issue of jurisdiction of the trial court, the learned trial judge is not able to dispose off the notice of motion.

7. It is not in dispute that on the basis of the plea of jurisdiction raised by the developer in the affidavit in reply, the learned trial judge has already framed an issue of jurisdiction and the matter is at the stage of recording of evidence. In my view interest of justice would be met with if the said issue of jurisdiction framed under section 9A of the Code of Civil Procedure is decided expeditiously.

8. The learned trial judge shall make an endeavour to decide the said issue within six months from today provided both parties co-operate with each other and with the learned trial judge in expeditious disposal of the said issue.

9. It is made clear that the learned trial judge shall decide the issue without being influenced by the observations made in the impugned order as well as this order.

10. The appeal is devoid of merits and is accordingly dismissed. In view of dismissal of the appeal from order, civil application does not survive and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]