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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.755 OF 2015
WITH
CIVIL APPLICATION NO.919 OF 2015

Clover Grove Co-op. Hsg. Soc. Ltd.	...Appellant
V/s.	
Reliance Infrastructure Ltd. & Ors.	...Respondents

Mr.Jitendra .G. Damani for the Appellant.

Dr.Birendra Saraf i/b Mr.Satish Kamat for the Respondent No.1.

Mr.S.K. Sonawane for the Respondent No.2 - B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 1ST MARCH, 2016.

P.C. :-

1. By this appeal from order, the appellant (original plaintiff) has impugned the order dated 20th April, 2015 passed by the learned trial Judge in Notice of Motion No.1250 of 2015 refusing to grant *ad-interim* relief.

2. It is the case of the appellant that the respondent no.3 – developer had not taken the consent of the appellant for construction of any sub-station on the plot which has to be conveyed to the appellant and in particularly on the portion of the plot which was sanctioned for parking for the members of the appellant society. It is

submitted that though possession was handed over to the members of the appellant society by the respondent no.3 – developer, the respondent no.3 has not executed any conveyance and did not inform the appellant for creating any lease in favour of the defendant no.1 for the purpose of erection of sub-station.

3. I have heard the learned counsel for all the parties at great length. This Court has passed a detailed order on 6th May, 2015 after hearing the parties and was pleased to grant *ad-interim* relief in terms of prayer clause (a) of the Civil Application (Stamp) No.13022 of 2015. The said order dated 6th May, 2015 is in force.

4. Learned counsel appearing for the respondent no.1 states that the respondent no.1 has already filed the written statement in the civil suit filed by the appellant (original plaintiff) which shall be treated as affidavit in reply. The Municipal Corporation has not filed any affidavit in reply in the said notice of motion till date.

5. In my view, since the ad-interim order is already passed by this Court on 6th May, 2015 which is in force till date and since the trial Court has passed order without having affidavit in reply on record, it would be appropriate if hearing of the notice of motion is expedited and directions to file reply are issued. Both the parties have raised various issues which are required to go into by the learned trial Judge in the notice of motion.

6. I therefore, pass the following order :-
- a). The impugned order passed by the learned trial Judge refusing to grant ad-interim relief is set aside.
 - b). The delay in filing of the written statement by the defendant no.1 is condoned and the said written statement shall be considered as an affidavit in reply in the notice of motion. A copy of such written statement shall be served upon the plaintiff's advocate within one week from today.
 - c). The Municipal Corporation is directed to file affidavit in reply within three weeks from today and shall serve a copy thereof upon the plaintiff's advocate simultaneously. Re-joinder, if any by the appellant (original plaintiff) shall be filed within two weeks from the date of service of the affidavit in reply.
 - d). It is made clear that the learned Judge shall decide the matter afresh without being influenced by the observations made in the impugned order. The learned trial Judge shall make an endeavor to dispose of the notice of motion within three months from the date of the plaintiff filing re-joinder.
 - e). Ad-interim order passed by this Court on 6th May, 2015 to continue till the disposal of the notice of motion and two weeks thereafter.
7. The appeal from order is accordingly disposed of in

aforesaid terms.

8. In view of the disposal of the appeal from order, the civil application does not survive and is accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)