

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

**APPEAL FROM ORDER NO.626 OF 2016
along with
CIVIL APPLICATION NO.834 OF 2016**

Pandurang Damodar Chinchwade & Anr. .. Appellants/Applicants
Vs.
Khandu @ Khanderao Damu
Chinchwade & Ors. .. Respondents

Mr.Ram Apte, Senior Advocate a/w Mr.Aditya Dandawate i/by
M/s.Mannadiar & Company for the Appellants/Applicants.
Mr.A.Y. Sakhare, Senior Advocate a/w Mr.Joel John Carlos for the
Respondent nos.7A & 7B.

CORAM : R.D. DHANUKA, J.
DATE : 23rd November 2016

P.C.

. By this appeal from order, the appellants (original plaintiffs) have impugned the order dated 30th April 2016 passed by the 6th Joint Civil Judge, Senior Division, Pune dismissing the application (exhibit-5) in Special Civil Suit No.420 of 2016.

2. Learned counsel appearing for the appellants submits that the respondent nos.1 to 6 had committed fraud upon the plaintiffs by executing various documents in favour of the respondent no.7 and by exceeding the powers granted to the respondent nos.1 to 6 in the power of attorney.

3. Mr.Sakhare, learned senior counsel appearing for the respondent nos.7A & 7B invited my attention to the photographs of the

building already constructed on the suit property and would submit that the respondent nos.1 to 6 had executed an agreement in favour of the respondent no.7 as far back as on 25th November 2014. He submits that the development agreement was entered in favour of his client after issuance of public notice inviting objections from the public before entering the development agreement. No objections were raised by the appellants in response to the said legal public notice. He submits that the respondent no.7 has borrowed substantial amount and has already carried out construction upto the 6th floor. He submits that several flats are already booked in the building constructed by the respondent no.7.

4. A perusal of the order passed by the learned trial Judge indicates that the learned trial Judge has rejected the application (exhibit-5) not only on the ground of gross delay in filing the suit but also on the ground that the balance of convenience is in favour of the defendants and not in favour of the plaintiffs. The learned trial Judge also held that the plaintiffs would not suffer any irreparable loss if the interim relief was refused. In my view, since there was gross delay on the part of the appellants in filing the suit as well as the application (exhibit-5) and in view of the respondent no.7 already having carried out substantial construction on the suit property and having entered into the development agreement after issuance of the public notice to which there was no response from the appellants, the learned trial Judge was justified in refusing to grant interim relief in favour of the appellants.

5. In my view, no case is made out for interference with the order passed by the learned trial Judge. The appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the appeal, the civil

application does not survive and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.