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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1098 OF 2015

Suneta K. Salvi	...Appellant
V/s.	
Mohan Apartment Co-op. Hsg. Soc. Ltd. & Ors.	...Respondents

Mr.R.A. Thorat, Senior Counsel with Mr.P.J. Thorat for the Appellant.

Mr.Viral Vora with Ms.Sweta Singh for the Respondent Nos.1 and 2.

Mr.A.V. Diwate for the Respondent – B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 5TH JANUARY, 2016.

P.C. :-

1. By this appeal from order the appellant has impugned the order passed by the learned trial Court refusing to grant any *ad-interim* relief in the notice of motion filed by the appellant *inter-alia* praying for an injunction against the respondent no.2 from carrying out any redevelopment and/or construction activities pursuant to the Deed of Development dated 19th December, 2013 and for other reliefs, including for an order and direction against the defendant no.4 to demarcate the property belonging to the defendant no.1.

2. It was the case of the plaintiff that the mother of the plaintiff under a registered Sale Deed dated 25th January, 1957 acquired the

suit property. According to the plaintiff, the society could claim the ownership only on 1632 sq. mtrs, whereas the society has entered into a redevelopment agreement with the defendant no.2 for an area of 2068.6 sq. mtrs.

3. A perusal of the *ad-interim* order passed by the learned trial Judge indicates that the learned trial Judge has given reasons for rejecting the *ad-interim* relief and has specifically rejected the *ad-interim* relief on the ground of delay.

4. The society has already filed affidavit in reply. The remaining respondents have not filed any affidavit in reply.

5. Mr.Thorat, learned senior counsel for the appellant has fairly pointed out that the Deed of Rectification has already been executed between the society and the developer and the correct area has been mentioned in the Deed of Rectification.

6. In my *prima-facie* view, since the society has already executed the Deed of Rectification with the developer, on that ground also the appellant is not entitled for any *ad-interim* relief, including on the ground of delay.

7. If the other respondents propose to file any affidavit in reply, they are at liberty to file the same within four weeks from today and shall serve a copy thereof upon the appellant's advocate simultaneously. Re-joinder, if any, shall be filed by the appellant

within two weeks from the date of service of the affidavit in reply.

8. The learned trial Judge shall make an endeavor to dispose of the notice of motion within six months from the date of completion of the pleadings in the interlocutory proceedings. The appeal is accordingly disposed of in aforesaid terms.

9. It is made clear that the respondents are at liberty to raise the issue of jurisdiction before the learned trial Court in the affidavit in reply. If any such objection is raised, the learned trial Court shall consider the same on its own merits.

(R.D. DHANUKA, J.)