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

WRIT PETITION NO. 7401 OF 2016

M/s. Patel Developers and Ors.

... Petitioners.

V/s.

Mr. Jayantibhai M. Vagadia and Ors.

... Respondents.

Mr. Atul Rajadhyaksha, Senior Advocate a/w. Nishant Tripathi i/b.
M. Tripathi & Co. for the Petitioners.

Mr. Dushyant Pagare for Respondent 1.

Mr. Rajesh Datar for Respondent 2.

CORAM : N.M. Jamdar, J.

26 September, 2016.

Oral Order :-

The Petitioners challenge the order passed by the learned Civil Judge, Senior Division, Thane dated 22 June 2016 below Exhibit 46 and Exhibit 48 in Special Civil Suit No. 209 of 2016. The Petitioners filed a Special Civil Suit against the Respondents seeking a prayer that the agreement of assignment dated 16 March 2011 executed by Defendant No.1 in favour of the Petitioners – Plaintiffs in respect of the suit plot is valid, the transactions between

Defendant No.1 and Defendant No.2 are void and certain other relief, including of injunction. An application below Exhibit 5 for temporary injunction is taken out by the Petitioners which is pending. During the pendency of the application for temporary injunction, the Petitioners moved an application under Order 19 Rule 1 and 2 of the Code of Civil Procedure, on 22 June 2016 seeking a direction that the Petitioners – Plaintiffs be permitted to cross-examine the Defendant No.1. Request was also made to the learned City Civil Court Judge to defer the hearing of the application for temporary injunction under Exhibit 5 till the application taken out under Order 19 Rule 1 and 2 is decided. By the impugned orders the learned Civil Judge did not consider the request of the Petitioners and did not continue the order of status-quo which was granted. Being aggrieved, the present Petition has been filed.

2. The learned Senior Advocate for the Petitioners submitted that in view of the documentary evidence, containing signatures of Defendant No.1, which signatures Defendant No.1 has denied, it is necessary that Defendant No.1 be put to cross-examine or a report of a handwriting expert is called for before the application for temporary injunction is decided. He submitted that no prejudice will be caused to the Respondent if this course of action will be adopted. The learned Counsel submitted that therefore the learned Civil Judge be directed to decide the application filed by the

Petitioner under Order 19 Rule 1 and 2 first and thereafter take up the application filed below Exhibit 5 and continue the order of status-quo. The learned Counsel for the Respondent opposed the said submissions and submitted that the order of status-quo which has been operating is not a reasoned order and the Petitioners can always pursue the application below Exhibit 5 on its own merits. He submitted that after obtaining the order of status-quo, the Petitioners are simply prolonging the matter.

3. The application filed by the Petitioners below Exhibit 5 is pending and it is necessary that the issue of temporary injunction is resolved at the earliest. Even while granting the order of status-quo in the suit, the learned Civil Judge has granted the order of status-quo on the ground that at that stage it is not discernible as to who is in possession. This state of affairs therefore cannot continue and a decision needs to be taken at the earliest. As far as the prayer of the Petitioners to permit the Petitioners to cross-examine the Defendant No.1 or to tender report of handwriting expert is concerned, it is for the learned Civil Judge to decide whether this course of action is necessary for determination of temporary injunction. The applications for temporary injunction have to be decided on the basis of well settled parameters such as prima-facie case, balance of convenience, irreparable loss, etc. Therefore, within these parameters, the learned Civil Judge will have to take a decision.

It may be that during the course of taking this decision, the learned Civil Judge finds that the report of the handwriting expert, or even at that stage or cross-examination of Defendant No.1 is necessary for adjudication. The learned Civil Judge may also not find the same necessary and find that the prima-facie case and other factors are clear enough. Therefore I am inclined to leave the decision making on these aspects to the learned Civil Judge while deciding the application below temporary injunction.

4. The joint request made by the learned Counsel for the parties for expeditious disposal of the application below Exhibit 5 has merit. Accordingly, the parties will appear before the learned Civil Judge on 5 October 2016 which is the next date in the suit. The learned Civil Judge will accordingly fix a time table for disposal of the application below Exhibit 5 and preferably conclude the arguments on the application below Exhibit 5 within period of two weeks thereafter. It is made clear that in case the learned Civil Judge comes to the conclusion that recourse of above circumstances as indicated is necessary then the time limit of two weeks will stand extended accordingly.

5. The order of status-quo which has been continued by this Court at the time of production is continued till the period of two weeks after 5 October 2016 as indicated. Further orders will be

decided by the learned Civil Judge on its own merits. All contentions of parties on merits of the controversy are kept open.

6. Writ Petition disposed off in above terms.

(N.M. Jamdar, J.)