

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

APPEAL FROM ORDER STAMP NO.18365 OF 2016

ALONGWITH

CIVIL APPLICATION STAMP NO.18624 OF 2016

Sabari Developers LLP and another

.. Appellants

Versus

Rabinder Shyam Nigam and others

.. Respondents

Mr. P. S. Dani, Senior Advocate a/w Mr. Chaitanya Chavan, Mr. Levi Rubens, Mr. Ruchit Dave, Mr. Yohaam Rubens i/by Vigil Juris for the Appellants.

Mr. P. K. Dhakephalkar, Senior Advocate a/w Mr. Chirab Mody i/by DSK Legal for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 27th JULY 2016

PC.

1 The order dated 28.06.2016 passed by the Learned Judge of the City Civil Court, Mumbai, is taken exception to by way of the above Appeal from Order. After arguing for sometime, the Learned Senior Counsel appearing on behalf of the Appellants and the Learned Senior Counsel appearing on behalf of the Respondent Nos.1 and 2 are agreeable to the impugned order dated 28.06.2016 being maintained. However, with a rider that the order dated 28.06.2016 which is concluded thus :-

“Hence, the position existing in the photographs tendered by the defendants shall be maintained by both parties till next date.”

would continue to operate pending the hearing and final disposal of the Notice of Motion with a clarification that under the said order dated 28.06.2016 the Defendants are entitled to access CTS No.110 through the gates which are shown in the photographs and which are in CTS No.111. The Learned Senior Counsel however make a request that the Notice of Motion be directed to be disposed of within a particulate time frame. Hence, the following directions :-

I) The order dated 28.06.2016 with the clarification as given hereinabove would operate pending the hearing and final disposal of the Notice of Motion. The same would be without prejudice to the rights and contentions of the parties.

II) It is clarified that though the impugned order dated 28.06.2016 is maintained, the same would have no bearing on the directions which are issued in the instant order.

III) The Defendant Nos.1 to 3 would file their affidavit in reply within two weeks from today as stated by the Learned Senior Counsel Mr. P. S. Dani on instructions of the partner Mr. Rubens of Vigil Juris who is personally present in Court.

IV) Rejoinder to be filed by the Plaintiffs within one week thereafter.

V) The Trial Court i.e. the Learned Judge of the City Civil Court is directed to hear and decide the Notice of Motion latest by 15.10.2016.

VI) Needless to state that the Notice of Motion would be tried on its own merits and in accordance with law and that the contentions of the parties are kept open for being urged before the Trial Court.

VII) The Trial Court to decide the Notice of Motion uninfluenced by the impugned order or the instant order.

2 With the aforesaid directions, the Appeal from Order is disposed of.

3 In view of the disposal of the above Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]