

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9205 OF 2014**

Mr. Alex Zusiya Fernandes

Petitioner

Vs

Smt. Celina Sunil Borges and
Anr

.. Respondents

Mr. Tarun K.Sinha, Advocate for Petitioner.

Mr. Ashutosh R. Gole, Advocate for Respondent no.1.

Ms. Pooja R. Singh i/b N.R Bubna, Advocate for Respondent no.2.

CORAM : R.G.KETKAR,J.

DATE : 18/03/2016

PC:

1. Heard Mr. Tarun Sinha, learned counsel for the petitioner, Mr Ashutosh Gole, learned counsel for respondent no.1 and Ms Pooja Singh, learned counsel for respondent no.2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 13.3.2014 passed by the learned District Judge-08 Thane in Misc.Civil Appeal No.12 of 2014. By that order, the learned District Judge allowed the Appeal preferred by respondent no.1, hereinafter referred to as 'plaintiff', and quashed and set aside the judgment and order dated 27.11.2013 passed by the learned Jt. Civil Judge, Jr. Dn., Thane, below Exh.5 in R.C.S. No.2120 of 2012. Learned District Judge directed the plaintiff and defendants to maintain status-quo in respect of the suit property till the disposal of that suit.

3. Rule. Learned counsel for the respondents waive service.

At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

4. Mr. Sinha submitted that the plaintiff had earlier instituted Regular Civil Suit No.683 of 2008 against defendants no.1 and 2 for perpetual injunction restraining the defendants from demolishing the suit property or any part thereof. During the pendency of that suit, the plaintiff took out application Exhibit-5 which was rejected on 9.2.2009. Misc.Civil Appeal No. 12 of 2009 preferred by the plaintiff against that decision was also dismissed. It is, thereafter, the present suit is instituted in the year 2012. In that proceedings, the plaintiff did not disclose rejection of application by the trial Court and dismissal of the Appeal by the District Court.

5. Mr. Sinha further submitted that in paragraph 9, the learned District Judge observed that construction of the plaintiff is illegal one, still proper procedure is required to be followed and all these aspects cannot be determined at preliminary stage of hearing of Exhibit-5. He submitted that the impugned order requires to be set aside only on the ground of non-application of mind.

6. After arguing some time, Mr. Gole consents for setting aside the impugned order and submits that Misc. Civil Appeal may be restored to the file of the District Court. Learned counsel agree that the parties will appear before the learned District Judge on

28.3.2016 and for that purpose no fresh notice be issued to the parties. In view thereof, by consent of the plaintiff and defendant no.1, the impugned judgment and order is set aside and Misc. Civil Appeal No.12 of 2014 is restored to the file of the District Court.

7. Parties shall appear before the District Court on 28.3.2016 and for that purpose fresh notice need not be given to them. Learned district Judge is requested to decide Misc. Civil Appeal within two weeks from the date of appearance of the parties. All contentions of the parties on merits are expressly kept open.

8. Notwithstanding of setting aside the impugned order, during the pendency of Misc. Civil Appeal, parties shall maintain status-quo. Grant of this interim order shall not be construed as an expression of merits of the case either way. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)