

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 877 OF 2016

Shri Shripat Dinkar Vaidya & Anr.

...Appellants

Versus

Mrs. Rizwana Mohammed Hadi

...Respondent

Mr.Francisco D'Souza, for the Appellant.

Mr.Vacha Sunder, for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 16th November, 2016.

ORDER:

1. Heard the learned Counsel for the parties. The Appellants-defendants who filed this appeal are challenging the order dated 7 June 2016 passed by the learned Judge, City Civil Court, Dindoshi (Borivali Div.), Goregaon, Mumbai in Notice of Motion no.870 of 2016 in S.C.Suit No.710 of 2016. Admittedly, the order is an ad-interim order on the said notice of motion. Notice of motion itself is pending adjudication before the learned Trial Judge. By the impugned order, the learned Judge prima facie considering the facts of the case as appearing in the injunction application, has granted ad-interim relief in terms of prayer clause (a). There is no dispute that the Respondent-Plaintiff is in possession as on date and that the ad-interim order is passed to his benefit in terms of

prayer clause (a) of the Notice of Motion. It is not a case that the Appellants-defendants are precluded from urging whatever defence available to him in asserting their rights in respect of the suit premises at the hearing of the Notice of Motion. It is appropriate that the Appellants assert their case at the hearing of the Notice of Motion.

2. Considering the facts and circumstances of the case, it is appropriate that the Notice of Motion itself is heard by the learned Trial Judge. The Appellants are at liberty to approach the Trial Court with a request to the learned Trial Court to take up the hearing of the Notice of Motion, which would be considered by the learned Trial Court on its own merits.

3. Needless to observe that the learned Trial Judge shall decide the Notice of Motion on its own merit and without being influenced by the observations made in the ad-interim / impugned order. All contentions of the parties on merit of the matter are expressly kept open.

4. Appeal from order is disposed of in the above terms.

(G.S.KULKARNI, J.)