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

CIVIL APPLICATION NO.2214 OF 2016

in

WRIT PETITION NO. 385 OF 2013

Mr. Yusuf Madraswala.

... Applicant.

In the matter between

Mr. Yusuf Madraswala.

... Petitioner
(Orig. Applicant)

V/s.

Pramila Suman Singh Thakur & Ors.

... Respondents.

Mr. Vishal Kanade a/w. Jayesh Vyas for the Applicant/Petitioner.
Ms. Pramila S. Thakur Respondent 1 – in person.

CORAM : N.M. Jamdar, J.

14 October, 2016.

P.C. :-

By this Application the Petitioner is seeking restoration of the order of dismissal of the Writ Petition dated 10 December 2015 and restoration of the ad-interim relief which was passed on 18 October 2013. The Petition was dismissed for non removal of office objections. Considering as to why the office objections are not

removed in time, I am inclined to restore the Writ Petition however, the question is whether the ad-interim relief should be continued by which the proceedings in the suit filed by the Respondents have been stayed.

2. The Writ Petition arises from an order passed by the learned City Civil Court Judge wherein the Application made by the Petitioner to join the Petitioner as party defendant in the suit filed by the Respondents has been rejected. It is the contention of the Petitioner that the Petitioner has filed a suit in the Civil Court, Pune wherein the order of temporary injunction has already been passed in favour of the Petitioner and the Respondents have joined the Petitioner as a party defendant has filed a suit in respect of the very property. The learned City Civil Court Judge has come to the conclusion that the property in possession of the Petitioner is different than the one involved in the present suit.

3. The Respondent – Plaintiff has chosen not to join the Petitioner as party defendant inspite of the claim of the Petitioner regarding the property being the same. This contention has been upheld by the learned Civil Judge. However the Respondent – Plaintiff has taken a risk of not joining the Petitioner as party defendant as no order passed during the hearing of the suit will be binding on the Petitioner since the Petitioner is not a party in the

suit. Therefore, even subsequently, if the learned Judge comes to the conclusion that during the trial that the properties in both suits are the same, not joining the Petitioner would be entirely at the risk of the Respondent – Plaintiff. The Respondent – Plaintiff who appears in person states that she is aware of the risk of not joining the Petitioner. Therefore, once the Petitioner's rights and possession and the orders passed in favour of the Petitioner are protected and not going to be affected by the present adjudication, it is not necessary to continue the stay to the proceedings in the suit filed by the Respondent – Plaintiff.

4. The settled law that the Respondent chooses to whom join in the suit and not joining in the property is at the risk as stated above. Therefore, even though the Petition is restored, there need not be any automatic continuation of the interim relief, which is not continued giving the clarification as above. The Petition itself could have been disposed of with this clarification but the learned Counsel for the Petitioner states that it will be argued at the time of hearing. Civil Application is disposed of.

(N.M. Jamdar, J.)