

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO. 1439 OF 2016

WITH

CAF/4157/2016

Shri Manmohan Gopiram Agarwal

.... Appellant

vs

Late Shri Budhaji Chander Gharate  
through LRs and ors.

.... Respondents

Mr. P. K. Dhakephalkar, Senior Advocate with Mr. J. G. (Aradwad)  
Reddy for the Appellant.Mr. N. V. Walawalkar, Senior Advocate with Mr. S.M. Sabrad and Vinod  
V. Shinde for Respondent.**CORAM: ANOOP V. MOHTA AND  
G. S. KULKARNI, JJ.****DATE : September 28, 2016****ORDER:**

The Appellant-original Plaintiff has filed this Appeal challenging order dated 1 September 2016 passed by the learned Civil Judge, Senior Division, Panvel in Special Civil Suit No. 313/2016, whereby an Application made by Respondents 1 to 9 (original Defendants 1 to 9) under Order 7, Rule 11 CPC, for dismissal of the Suit against these Defendants has been allowed.

2           We heard this Appeal for admission on the last occasion and had adjourned the same for today in order to enable the Respondents to explore their position and to consider whether the issue as arising in this First Appeal can be resolved in some manner. While adjourning the Appeal for today, we had also directed the parties to maintain status-quo till today.

3           Today Mr.Walawalkar, learned senior counsel for Respondents 1 to 9 (Defendant Nos. 1 to 9), on instructions, makes a statement that his clients are willing to contest the Suit on merits and are agreeable for the impugned order to be set aside. Accordingly, by consent of the parties, the impugned order dated 1 September 2016 passed by the learned trial Judge is set aside. The parties agree that in view of this consensus, no reasons are required to be recorded by this Court in passing the present order.

4           As the impugned order is set aside, parties are relegated to the trial Court. As informed by the learned counsel for the parties, the stage of the Suit is that an Injunction application as filed on behalf of

the Appellant-Plaintiff is pending, on which the trial Court on 19.08.2016 has passed ad-interim orders against Defendants 10 to 18. In the facts and circumstances of the case, it would be appropriate and in the interest of justice that the Injunction Application is heard by the learned trial Judge for further ad-interim or interim reliefs as early as possible. If the Appellant so desires, it would be open to the Appellant-Plaintiff to make a fresh Application requesting the Court to take up the Injunction Application for necessary orders to be passed thereon. Needless to observe that Respondents 1 to 9 are at liberty to defend the Application and we are informed that they intend to file a reply to the Injunction Application. All contentions of the parties on the Injunction Application are expressly kept open.

5           In the facts and circumstances of the case, to enable the Appellant to approach the trial Court with a fresh request for hearing of the Injunction Application, we feel it appropriate that the status-quo order which we have passed on 23 September 2016 be permitted to remain in operation for a period of three weeks from today. Needless to observe that the learned trial Judge shall pass appropriate orders,           ad-interim       or       interim       on       the       Injunction

Application strictly on the merits of the Application and without being influenced by the continuation of the status-quo as directed by us.

6           The Appeal is accordingly disposed of in the above terms.  
No order as to costs.

7           Civil Application No.4157/2016 would also not survive  
and is accordingly disposed of.

8           As the present order is passed by consent, the Appellant  
would become entitle for refund of court fee as per rules. Refund of  
court fees as per Rules.

Parties to act on the basis of an authenticated copy of this  
order.

**(G. S. KULKARNI, J.)**

**(ANOOP V. MOHTA, J.)**