

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1159 OF 2016
IN
APPEAL FROM ORDER (ST) NO.26822 OF 2016

Kapadia Development Co-operative
Housing Society Ltd.

.... Appellant.

V/s.

The Collector,
Mumbai Suburban District and ors

.... Respondents

Mr. Atul Damle, Senior Advocate I/by Mr. Rakesh Agrawal, for the
Appellant.

Mr. Makarand Patil, AGP for the Respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH SEPTEMBER, 2016.

P.C. :

1. Heard learned counsel for the appellant.
2. This appeal is preferred alongwith Application for condonation of delay, challenging the order dated 12th July, 2016, whereby the City Civil Court, Mumbai has refused ad-interim relief in Draft Notice of Motion in S.C. Suit No.1495 of 2016. By the said Notice of Motion, appellant has sought relief of grant of stay to the effect and operation of the order dated 27.11.2014 passed by Respondent No.3 and the order dated 13.4.2015, passed by the respondent No.1.

3. As per order dated 13.4.2015, permission was granted for sub division of the disputed plot. The trial Court has rejected ad-interim relief on the ground that the contesting party, respondent No.4, has not yet appeared and secondly, also on the count that appellant is having remedy to challenge the said order before competent authority.

4. Learned counsel for appellant has submitted that the competent authority to challenge the said order is only by the Civil Suit. Learned counsel in support of his submission relied upon the order passed by the Division Bench of this Court, in W.P. 2130 of 2015, on 5.5.2016. It is submitted that ad-interim relief is required to be granted to restrain the respondents on acting in pursuance of the notice dated 14.9.2016 by which it is informed by City Survey Officer, Kurla that measurement will be taken on 29.09.2016.

5. The learned AGP has strong objection to grant such relief on the count that delay in preferring appeal is not condoned till now and secondly contesting respondent No.4 has not yet appeared as the Notice to respondent No.4 is not also issued by this Court. It is also submitted that apparently, the appellant has not made out any prima facie case and trial Court has already considered contentions of the appellant and rejected ad-interim relief.

6. In the opinion of this Court, considering the fact that the delay in preferring appeal is yet not condoned and also having regard to the fact

that the Notice of Motion in which the relief of ad-interim relief was rejected, is yet pending before the trial Court and having regard to the fact that respondent No.4 contesting party is not served, it would be in the fitness of things and appropriate, if the parties are relegated to the trial Court for agitating and conducting the hearing on Notice of Motion. However, meanwhile though measurement of the suit cannot be stayed which is scheduled on 29.9.2016, the effect and operation of the said measurement is stayed and parties are restrained from acting on the report and map of measurement till the notice of Motion is decided.

7. The Trial Court is directed to hear and decide the Notice of Motion as expeditiously as possible.

8. The appeal and Civil Application, both are disposed of accordingly in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]