

JPP

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

***APPEAL FROM ORDER NO.1138 OF 2015
WITH
CIVIL APPLICATION NO. 1418 OF 2015***

Mr. Vinod Vithoba Shivalkar & Ors. ... Appellants/
Applicants.

V/s.

Mr. Prakash Vithoba Shivalkar & Ors. ... Respondents.

Mr. Dushyant Pagare for the Appellants/Applicants.
None for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 28 MARCH, 2016.

P.C. :-

The Appellants challenge the order passed by the City Civil Court, Bombay dated 10 August 2015 dismissing the Notice of Motion No. 1016 of 2015 in S.C. Suit No. 594 of 2015 by order dated 10 August 2015.

2. The Appellants had taken out the Notice of Motion for the following relief :-

- (a) Restraining Defendants from allotting/handling over/disposing, transferring newly allotted flat in lieu of suit premises in the sole name of Defendant No.1;
- (b) Restraining Defendant No.4 from disbursing monthly compensation amount towards temporary accommodation; and
- (c) Directing Defendant No.4 for disbursing monthly compensation to the Plaintiffs and the Defendants as 1/5th share each.

3. Parties are related. The Defendant No.6 – Respondent No.1 herein is the brother of the Appellants. It is the case of the Appellants that the father of the Plaintiff and the Defendant was in employment of Bombay Dyeing and Manufacturing Co. Ltd. and in the process of re-development the parties are entitled to possession of certain premises. The reliefs sought for in the Notice of Motion is regarding allotment and monthly compensation.

4. At the relevant time the Respondent No.1 was occupying the premises and if monthly compensation and temporary accommodation is not given to him, he will be virtually on the street, as against the Appellants who have their own places currently to stay. Therefore, I am not inclined to interfere in the discretionary order of the City Civil Court as regard restraining the Respondent authorities from allotting the premises to Respondent No.1. If the same is allotted, it can be made subject to the final

orders to be passed in the Suit. This will adequately safeguard the interest of the Appellants. Order accordingly.

5. By clarifying that any steps taken in respect of the suit flat will be subject to the orders passed in the Suit, the Appeal from Order is disposed of. The Civil Application does not survive and is disposed of accordingly.

(N.M. JAMDAR, J.)