

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

APPEAL FROM ORDER NO. 255 OF 2016

ALONG WITH

CIVIL APPLICATION NO. 331 OF 2016

IN

APPEAL FROM ORDER NO. 255 OF 2016

Mansingh S/o. Mahavir Nayak

...Appellant

Versus

Sai Siddhant Developers

...Respondent

Mr. A.M. Saraogi, for the Appellant.

None for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 5th December 2016

ORDER :

1. Not on board. Taken on board on a praecipe as moved on behalf of the Appellant.

2. Heard Mr. Saraogi, the learned Counsel for the Appellant. Admittedly, the impugned order dated 30th September 2015 passed by the learned Judge, City Civil Court at Mumbai

(Borivali Division) is on a draft Notice of Motion in Suit No. 2627 of 2015. By the impugned order, ad-interim relief has been refused. Mr. Saraogi fairly submits that the Notice of Motion is still pending. Considering the prayers as made in the Notice of Motion, the reliefs are in the nature of mandatory injunction. Rightly the reliefs could not be granted at the ad-interim stage. The Notice of Motion itself is required to be heard and decided.

3. Mr. Saraogi, informs that the Respondent has so far not filed Reply to the Notice of Motion. The Respondent/Defendant is directed to file Reply within a period of four weeks from today. After Reply is filed, the Appellant is at liberty to make a request to the learned Trial Judge to take up hearing of the Notice of Motion. The learned Trial Judge shall endeavour to dispose of the Notice of Motion as early as possible and in any case, before 30th May 2017.

4. The Appeal from Order in the above circumstances, would not require any further adjudication and is disposed of in the aforesaid terms.

5. The Civil Application would also not survive and is accordingly disposed of.

[G.S. KULKARNI, J.]