

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

**APPEAL FROM ORDER NO.1170 OF 2014
WITH
CIVIL APPLICATION NO.1410 OF 2014
IN
APPEAL FROM ORDER NO.1170 OF 2014**

Mishra Builders & Developers

..Appellant/Applicant
(Org. Defendant No.7)

V/s.

Thomas Rajan & Ors.

..Respondents
(Org. Plaintiff's)

Mr.Indrajeet Yadav for the Appellant/Applicant.

Mr.G.S. Godbole a/w Mr.Cyrus Bharucha and Mr.A.B. Kapadia
i/by Daphtary Derriera & Divan for Respondent No.1.

CORAM : G.S. KULKARNI, J.

DATE : 21st DECEMBER, 2016.

P.C.

1. Heard Mr.Indrajeet Yadav the learned counsel for the appellant and Mr.Godbole with Mr.Bharucha for Respondent No.1.

2. This appeal of Defendant No.7 is directed against the order dated 01st October 2014 passed by the learned Judge City Civil Court, Dindoshi, Goregaon, Mumbai in a draft Notice of Motion in Suit No.2321 of 2014. By the impugned order, the learned Trial Judge has granted ad-interim reliefs on the

said Notice of Motion. By way of ad-interim injunction, the appellant/defendant No.7 is restrained from creating third party interest in the suit property to any third party till the disposal of the Notice of Motion.

3. Mr.Yadav the learned counsel for the appellant submits that the Notice of Motion is still pending for final disposal before the Trial Court. It is submitted that the appellant also has filed Notice of Motion No.2398 of 2014 in the pending suit (L.C. No.2321 of 2014) raising objection to the pecuniary jurisdiction of the Court and for a prayer that preliminary issue be framed under Section 9A in that regard. It is submitted that the Notice of Motion is also pending before the trial Court.

4. Considering the above facts and circumstances and more particularly that the impugned order dated 01st October 2014 as challenged in this appeal is in operation since last more than two years, it would be appropriate that the parties approach the learned Trial Judge with a request to take up the hearing of Notice of Motion No.2398 of 2014 filed on behalf of the appellant and once the said Notice of Motion is decided, if the circumstances so permit, it would be permissible for the appellant to request the learned Trial Judge to pass appropriate orders on the Notice of Motion on which the impugned ad-interim orders are passed. The learned counsel for the appellant is agreeable for this course of action.

5. Considering the above facts and circumstances of the case, the appeal from order does not require a further adjudication. It is accordingly, disposed of, permitting the appellant to approach the Trial Court as observed above.

6. All contentions of the parties on merits are kept open. Civil Application No.1410 of 2014 would also not survive and accordingly is disposed of. No order as to costs.

7. The learned Trial Judge endeavor to disposed of Notice of Motion No.2398 of 2014 as early as possible and within a period of four months from today.

(G.S. KULKARNI, J.)