

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10507 OF 2013
WITH
CIVIL APPLICATION NO. 3002 OF 2015
IN
WRIT PETITION NO. 10507 OF 2013
WITH
CIVIL APPLICATION NO. 3003 OF 2015
IN
WRIT PETITION NO. 10507 OF 2013
WITH
WRIT PETITION NO. 10509 OF 2013

M/s. M. B. Associates,
a partnership firm, through
its partners

Mr. Manhar R. Bagadia & Anr.

.. Petitioners

VS.

Mrs. Sharifa w/o. Hashim Vaid & Ors.

.. Respondents

Ms Pratibha Shelke i/b. Mr. P. J. Thorat for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 23 DECEMBER 2016

P.C :

1] Heard Ms Shelke for the petitioners. None for the respondents, though served.

2] This Court, by order dated 19 November 2013 had indicated that these petitions will be heard and disposed of finally at the stage of admission.

3] Further, by the same order dated 19 November 2013, this Court, had directed an interim arrangement, which, continues till date. For sake of convenience, the order dated 19 November 2013, is transcribed below :

“ The above Writ Petitions take exception to the order dated 10.07.2013 passed by the Lower Appellate Court i.e. the learned District Judge-8, Thane by which order, the order passed by the Trial Court dated 14.01.2008 in the application for temporary injunction filed by the Plaintiff was modified and Defendant Nos. 1 to 4 and 6 to 17 out of which Defendant Nos. 16 and 17 are the Petitioners were restrained from carrying out further construction and creating third party interest in the suit property, till final decision of the suit.

2 Insofar as, the order passed by the trial court on the application for temporary injunction is concerned, the trial court had restrained the said Defendant Nos. 1 to 4 and 6 to 17 from carrying out construction or to create third party interest over 25% of the suit property (it is not included into Conveyance Deed executed in favour of Defendant No.16 by some of the Defendants and some of the Plaintiffs). The trial court by way of clause (b) has observed that the plaintiffs' claim over 75% of the said property is rejected.

3 It appears that on the date when the suit was filed, the construction had progressed from the basement to second floor. The order of the trial court continued up to the impugned order being passed by the Lower Appellant Court. Hence, the order permitting Defendant nos. 16 and 17 to carry out the construction to the extent 75% of the suit property had

continued for over 5 years, during which period the construction is almost complete, except some finishing work being carried out. The photographs of the said construction are annexed to the Petition as Exhibit G collectively at pages 125 to 127, which show that there is a construction of ground plus three storeys, and houses, the mall known as Miracle Mall.

4 It is the submission of the learned Counsel appearing on behalf of the Petitioners in both the Petitions that the Trial Court having permitted the construction to go on to the extent of 75% of the suit property by protecting the interest of the Plaintiffs to the extent of 25% by restraining the defendants from carrying out the construction over the said 25%, the Lower Appellant Court had erred in vacating/modifying order. Insofar as the said 25% is concerned, the learned Counsel on behalf of the petitioners tendered an Area statement prepared by architect and consultant of the Petitioners showing that the area constructed is to the extent of 3624 sq. meters and the balance area which is available is to the extent of 2703.80 sq. meters. The learned Counsel contends that the said balance area would serve the interest of the Plaintiffs.

5 Hence, issue notice to Respondent Nos. 1 to 8 in both the Petitions, returnable on 12.12.2013.

6 Notice to indicate that the above Petitions may be heard and disposed of finally at the admission stage. In the meantime, the Petitioners would be entitled to carry out finishing work in the existing structure, but no new construction to be carried out in the said balance area of 2703.80 sq. meters. Since, there is already an order restraining the

Petitioners from creating any third party interest, there is no warrant to pass an order in that respect and the said restraining order would continue.”

4] The aforesaid interim arrangement has continued from 19 November 2013 till date. The interim arrangement, can be continued further until disposal of the Regular Civil Suit No. 70 of 2007, since, in the present petitions, we are only concerned with interim reliefs pending the final disposal of the suit. The interim arrangement, to a great extent, protects the interests of both the parties.

5] The Civil Suit, during the pendency of which the interim arrangement is to operate was instituted in the year 2007. As such, it is reasonable to presume that the suit must be at an advanced stage. In any case, considering that the suit was instituted in the year 2007, the learned Civil Judge, Junior Division at Bhiwandi is directed to dispose of the suit as expeditiously as possible and in any case within a period of one year from today.

6] These petitions are therefore disposed of with the following order:

(A) The interim arrangement indicated in the order dated 19 November 2013 shall operate until the final disposal of Regular Civil Suit No. 70 of 2007;

(B) The learned Civil Judge, Junior Division at Bhiwandi is directed to dispose of the Regular Civil Suit No. 70 of 2007 on its own merits without being influenced by any of the observations in the interim orders made either by the Civil Court itself, the District Court or this Court. Regular Civil Suit No. 70 of 2007 is directed to be disposed of, as expeditiously as possible and in any case within a period of one year from today;

(C) The parties are directed to co-operate with the Civil Judge in the matter of expeditious disposal of the suit. In particular, considering that the suit was instituted in the year 2007, neither of the parties shall seek any unnecessary adjournments. In case, the defendant nos. 16 and 17 or for that matter any of the defendants in the suit unnecessarily delay the proceedings, the plaintiffs shall be entitled to seek a variation of the interim arrangement before the Civil Court, and such application for variation shall be disposed of by the Civil Court as expeditiously as possible;

(D) All concerned to act on basis of authenticated copy of this order.

(E) The petitioners to appear before the Civil Court on 16 January 2017 and produced authenticated copy of this order.

(F) There is some dispute as to whether the aforesaid suit is pending before the Civil Judge, Junior Division at Bhiwandi or whether the same is pending before the Civil Judge, Senior Division

at Thane. Accordingly, liberty is granted to the petitioners to present authenticated copy of this Order before the learned Civil Judge, who is seized of the Civil Suit. Accordingly, the directions issued earlier will apply to the learned Civil Judge who is actually seized of the matter.

(G) Since the main petitions are disposed of, civil applications do not survive and the same are disposed of accordingly.

(M. S. SONAK, J.)