

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 114 OF 2016
with
Civil Application no.150 of 2016

Ms. Kavita Sitaram Rinjad	...Appellant
<i>Versus</i>	
M/s. Malde Properties Pvt. Ltd.	...Respondent

Mr.Kameshwar R.Tiwari, for the Appellant.

Mr.Anoop Patil, for the Slum Rehabilitation Authority.

Mr.M.K.Tanna i/b. Mr.PM.Shah, for the Respondent.

CORAM: G. S. KULKARNI, J.

DATED: 29th April, 2016

PC:-

Not on board Taken on Board.

1. Heard the learned Counsel for the parties. This Appeal from Order challenges an ad-interim order dated 23rd September,2015 passed by the learned Judge City Civil Court at Mumbai in Notice of Motion No.3519 of 2015 in S.C.Suit No.2097 of 2015.

2. At the ad-interim stage, a reply affidavit came to be filed on behalf of the Respondent-Defendant relying on certain agreement/MOU dated 18th February,2015 entered between the Appellant-Plaintiff and the

Respondent to contend that the Plaintiff has already consented for a SRA project as also the Plaintiff has received certain amounts. This fact is disputed on behalf of the Plaintiff for the first time in this Appeal by raising a ground that the said document as relied upon on behalf of the Respondent-Defendant is forged and fabricated. It appears that there is no rejoinder affidavit which is filed on behalf of the Plaintiff to dispute this factual position before the Trial Court. It may not be possible to adjudicate on this controversy in this appeal as the appeal arises against an ad-interim order which was passed on the basis of material which was available at that stage before the trial Court and prima facie taken into consideration whereby the ad-interim relief came to be refused by the learned Trial Judge. The Notice of Motion is still pending hearing and as seen from the order it was made returnable on 14th December,2015. This appeal is pending on the file of this Court from 28th October,2015.

2. Taking into consideration the above position, it would be appropriate that the Notice of Motion which is pending before the Trial Court is heard and disposed of by permitting the parties to file any further pleadings if they so desire.

3. This Appeal from Order as arises from an ad-interim order cannot be kept pending and can be disposed of in the light of the above

facts. Accordingly, the Appeal from Order is disposed of by permitting the parties to approach the Trial Court with a request to take up the hearing of the Notice of Motion. If such a request is made by the parties, it be considered by the Trial Court on its own merits. The Appeal from Order is accordingly disposed of. No order as to costs.

4. Civil Application would also not survive, the same is accordingly disposed of.

5. All the contentions of the parties are expressly kept open.

(G. S. KULKARNI,J.)