

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 1082 OF 2012****ALONGWITH****CIVIL APPLICATION NO.2149 OF 2012****Mrs.Aruna Jalindar Deokate****..... Appellant****VERSUS****Ravindra Jagannath Shinde & Ors.****..... Respondents**

Mr.Prashant Jadhav, i/b. Ms.Shakuntala Wadekar for the Appellant.

Mr.Ravi Shinde, i/b.Ms.Anjali Ranade for the Respondents.

CORAM : R.D. DHANUKA, J.**DATED : 3rd MARCH, 2016****P.C.**

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the judgment dated 11th September, 2012 passed by the lower appellate court dismissing the appeal filed by the appellant and decree of the learned trial judge directing the appellant to demolish a portion of the structure constructed by the appellant thereby closing three windows facing towards the property of the respondents.

2. A perusal of the record and also the findings rendered by the learned trial judge clearly indicates that the learned trial judge after considering the oral evidence as well as the documentary evidence and after interpreting the terms of the agreement entered into between the parties has held that the appellant had carried out unauthorized construction which was contrary to the terms of the agreement entered into between the parties. The learned trial judge has accordingly directed the appellant (original defendant) to demolish the

unauthorized portion.

3. Being aggrieved by the said judgment and decree passed by the learned trial judge herein, the appellant preferred an appeal before the lower appellate court (519 of 2008). A perusal of the order passed by the lower appellate court clearly indicates that the lower appellate court also after framing the points for determination has considered the submissions made by both the parties and has rendered a detailed judgment. The lower appellate court has also rendered a findings independently and has come to the conclusion that the appellant had carried out unauthorized construction which was contrary to the provisions of the agreement entered into between the parties and has upheld the order passed by the learned trial judge.

4. The findings recorded by the two courts below are concurrent findings. This court thus cannot interfere with the concurrent findings rendered by the two courts below under section 100 of the Code of Civil Procedure, 1908 which findings are not perverse. No substantial question of law has been arisen in this second appeal. Second appeal is disposed of in the aforesaid terms. Interim protection granted by this court stands vacated. In view of disposal of second appeal, civil application for stay does not survive and is accordingly disposed of.

5. The appellant is directed to pay cost of Rs.25,000/- to the respondent no.1 within two weeks from today.

6. At this stage learned counsel appearing for the appellant seeks continuation of the ad-interim order passed by this court which is vehemently opposed by the learned counsel for the respondents on the ground that his client has succeeded in

three courts and the matter was unnecessarily prolonged by the appellant for four years. Application for continuation of the ad-interim order is rejected.

[R.D. DHANUKA, J.]