

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 16 OF 2016****ALONGWITH****CIVIL APPLICATION NO. 22 OF 2016****IN****APPEAL FROM ORDER NO. 16 OF 2016****Daryus Soley Panthakey****..... Appellant****VERSUS****Prakash J.Mehta & Ors.****..... Respondents**

Mr.Sanjay Jain, a/w. Mr.Vishal Thaker and Ms.Anjali Trivedi for the Appellant.

Mr.A.R.Pande for Respondent No.2.

Mr.B.B.Nangare, i/b. B.B.Nangare and Associates for Respondent Nos. 4 and 5.

CORAM : R.D. DHANUKA, J.**DATED : 25th JANUARY, 2016****P.C.**

By this appeal from order, the appellant has impugned the order dated 30th November, 2015 passed by the learned trial judge refusing to grant ad-interim relief in terms of prayer clause (g) of the notice of motion which was for mandatory order in favour of the plaintiff to reinstate the boundary wall to protect and secure his property. It is the case of the appellant the (original plaintiff) that the demolition of the wall was carried out by the defendant no.2 and the respondents to the notice of motion in violation of the impugned order passed by the learned trial judge.

2. Learned counsel appearing for the respondent no.2 on the other hand states that the notice of motion is already placed on board for hearing and final disposal

by the learned trial judge on 30th March, 2016.

3. In my view interest of justice would be met with if the hearing of the notice of motion is preponed and is directed to be disposed off on or before 15th March, 2016. A perusal of the order passed by the learned trial judge indicates that though he has rejected ad-interim relief in terms of prayer clause (g), the defendants and the respondents are directed to file their affidavit in reply in order to decide the other prayers of the plaintiff in the notice of motion. A perusal of the directions issued in paragraph (2) of the operative part of the order indicates that the learned trial judge has virtually dismissed prayer clause (g) of the notice of motion. It is thus made clear that the learned trial judge shall not be influenced by the observations made by the learned trial judge and also the directions issued in paragraph (2) of the impugned order. It is made clear that the learned trial judge shall consider the grant of prayer clause (g) on its own merits of the impugned order while hearing and disposing of the notice of motion.

4. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]