

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (St.) NO. 33749 OF 2015
WITH
CIVIL APPLICATION (St.)NO. 33751 OF 2015 IN A.O. (St.)NO. 33749 OF 2015**

M/s. Sai Ganesh Enterprises ... Appellant/Applicant
Vs.
Smt. Hirabai Nathuram Patil & Ors. ... Respondents

Mr. S.M. Oka a/w. Mr. Sagar A. Joshi, Advocate for the appellant/applicant.
Mr. N.V. Walawalkar, Senior Advocate i/b. Mr. Jeetendra Sachdev,
Advocate for respondent no. 7.
Mr. Rohit Sakhadeo i/b. Mr. Pramod Sakhadeo, Advocate for respondent
nos. 9 and 10.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th February, 2016.**

P.C.:

The learned counsel for the appellant submitted that he has served respondent nos. 1 to 6 and affidavit to that effect is filed. However, respondent nos. 1 to 6 are not represented.

2. Admit. The learned counsel for the respondent nos. 7, 9 and 10 waive service. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal from Order is directed against the order dated 16th November, 2015 by which the learned Civil Judge Senior Division, Panvel has recalled the order dated 1st October, 2015 and also recalled the order of status quo which was granted on 1st October, 2015. The appellant/plaintiff is a builder/developer, who has entered into an agreement in respect of the

land with respondent/defendant nos. 1 to 6 on 18th August, 2011 and the plaintiff/appellant has paid Rs.4,50,000/- towards the part of the consideration which was fixed at Rs.1,10,00,000/-. Respondent no. 7 is also a builder/developer, who had entered into an tripartite agreement on 25th March, 2008 in respect of transfer of leasehold rights with defendant nos. 1 to 6 and respondent nos. 9 and 10/CIDCO.

3. The learned counsel for the appellant has submitted that by an order dated 1st October, 2015, the order of status quo was granted against respondent nos. 9 and 10/CIDCO. Thereafter, an application was moved under Order 39 Rule 4 of the Code of Civil Procedure by respondent no. 7 for vacating the order of status quo, as respondent no. 7 was directly affected party. The learned counsel submitted that the trial Court ought not to have recalled the said order of status quo by an order dated 16th November, 2015 but should have heard the interim application Exhibit 5 moved by the plaintiff/appellant, which was pending.

4. Per contra, the learned senior counsel for respondent no. 7 submitted that though the order of status quo was passed against respondent nos. 9 and 10, it was affecting directly on respondent no. 7 and therefore, the said application to vacate the order of status quo was made. He submitted that already respondent no. 7 have constructed 7 storied building and the plan

of 10 storied building is approved. He has produced the photograph. He submitted that because of the order of status quo subsequently granted by this Court though the caveat was filed, respondent no. 7 is facing financial loss and so also workers deployed there are sitting idle.

5. After hearing the learned counsel for both the sides and after going through the impugned order passed by the learned Judge of the trial Court and applications made by the parties, I am of the view that the trial Court ought to have heard and decided Application Exhibit 5 on merit when the application was made to vacate the order of status quo was made. Therefore, I think the following order will meet the ends of justice.

- (i) Appeal is partly allowed.
- (ii) The trial Court to hear and dispose of Application Exhibit 5 till 31st March, 2016.
- (iii) Respondent no. 7 is allowed to construct one more floor, i.e., 8th floor. However, they should not go beyond 8th floor.
- (iv) Respondent no. 7 not to create third party interest hereafter and list of parties in whose favour interest is created is to be filed before the trial Court.
- (v) The parties to appear before the trial Court on 24th February, 2016. Parties to cooperate.
- (vi) Respondent nos. 9 and 10 have not filed reply. They should file reply, if any, on 24th February, 2016.

(vii) Liberty given to respondent no. 7 to move an application before the trial Court for further orders if the trial Court is not in a position to decide the Application Exhibit 5.

6. Appeal from Order is disposed of. In view of this, Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)