

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 348 OF 2016
IN
FIRST APPEAL NO. 1072 OF 2013**

Deoram Parvat Sathe	}	Applicant
in the matter of		
Nilesh Dharampal Hanswani	}	Appellant
versus		
Sarang Hotel Pvt. Ltd. and Ors.	}	Respondents

Mr. Rajshekhar V. Govilkar for the Applicant
(original respondent No. 7).

Mr. Girish S. Godbole i/b. Mr. Sumit S. Kothari
for Respondent No. 1 (original appellant in the
First Appeal.)

**CORAM :- S.C.DHARMADHIKARI &
REVATI MOHITE DERE, JJ.**

DATED :- FEBRUARY 25, 2016

P.C. :- (In Chamber)

1) Having heard Mr. Govilkar for the applicant/original respondent No. 7 and Mr. Godbole for the original appellant and perusing this Civil Application and the Annexures thereto, what we find is that the Minutes of Order, based on which the application has been made, state that respondent No. 7 undertakes to this Court that pending the First Appeal, he will not create any third party interest or part with possession or create any mortgage or charge in respect of immovable property, more particularly described therein and a

further undertaking not to change its location or dimension at the time of getting final approval of tentative layout.

2) At the same time, the Minutes of Order state that the 7th respondent, proposing to carry out any construction on the plot, shall serve an advance notice of at least one month on the original appellant and the appellant thereafter will be at liberty to apply for appropriate reliefs.

3) Understood thus, it would be apparent that once the present application is made on the footing that this one month's notice has been given and the original appellant having availed of all the remedies to seek appropriate reliefs in the pending First Appeal, then, that application for appropriate reliefs being made by the original appellant and it being pending all that is required to be clarified is that the Minutes of Order and the undertakings recorded therein as far as respondent No. 7 are concerned, would be subject to the outcome of the application made by the original appellant for appropriate reliefs. Meaning thereby, such an application for injunction having already been filed and stated to be pending, its outcome will govern the fate of the Minutes of Order as well.

4) Hence, without expressing any opinion on the rival contentions insofar as merits of the controversy, we dispose of this Civil Application with the above clarification.

5) At this stage, Mr. Godbole, learned Counsel appearing for the original appellant submits that Civil Application (St.) No. 7385 of 2015 is filed for seeking appropriate reliefs including injunction pending the First Appeal. The applicant therein/original appellant in the First Appeal will seek circulation thereof expeditiously, but to enable him to so apply and for listing of the Civil Application, the Minutes of Order and the statements/undertakings of respondent No. 7 therein be continued for some reasonable time.

6) Mr. Govilkar opposes this request and submits that the conduct of the appellant is such that having filed this application, it was allowed to be dismissed for non removal of office objections and was never moved thereafter. Hence, this prayer be rejected.

7) After hearing both sides on this point, we direct that for a period of two weeks from today, the Minutes of Order shall operate, including the undertakings therein of respondent No. 7, but without prejudice to the rights and contentions of all parties.

8) The Civil Application is disposed of.

(REVATI MOHITE DERE, J.) (S.C.DHARMADHIKARI, J.)