

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.242 OF 2015
IN
NOTICE OF MOTION NO.775 OF 2012
WITH
NOTICE OF MOTION NO.745 OF 2015

Prabodh J. Kothari	Appellant
versus	
Vikram J. Kothari and others	Respondents

Mr.Vineet Naik, Senior Advocate, with Mr.A.K.Thakkar and Mr.D.Siroya i/by M/s.Thakkar & Co. for Appellant.

Mr.Darius Shroff, Senior Advocate, with Mr.Karan Shroff i/by M/s.Markant Gandhi for Respondents 1 and 2.

Ms.Nupur Desai i/by M/s.Markant Gandhi for Respondent no.3.

Mr.Snehal Shah with Mr.Nikhil Jani i/by Vigil Juris for Respondent nos.5 to 10.

Ms.J.N.Pandhi with Mrs.Purnima Avasthi for Respondent no.11.

CORAM : A.S.OKA AND P.D.NAIK, JJ.

DATE : 30th March 2016

PC :

1. Heard learned Senior Advocate appearing for the Appellant. His submission is that the Appellant is not pressing the appeal at this stage, but liberty may be granted to move the

learned Single Judge for grant of further ad-interim relief, if Respondent nos.5 to 10 commence the actual development work on the property. He expresses an apprehension that the prima facie findings recorded by the learned Single Judge in the impugned order may come in the way of the Appellant.

2. We have perused the impugned order. The impugned order deals with prayer made by the Appellant-Plaintiff for grant of ad-interim relief in terms of sub-Section 2 of Section 9A of the Code of Civil Procedure, 1908 ('Code') till the decision on the preliminary issue. Therefore, it is obvious that the prima facie findings recorded by the learned Single Judge are only for the limited purpose of considering the prayer for ad-interim relief, pending disposal of the preliminary issue.

3. As of today, actual development work is not commenced by Respondent nos.5 to 10. Learned counsel for Respondent nos.5 to 10 states that actual development work may start after some time as there are about 700 tenants occupying the property at present.

4. Hence, we dispose of the appeal as not pressed. We clarify that prima facie observations made in the impugned order by learned Single Judge are only for the limited purpose of considering the prayer made by the Appellant for considering the ad-interim relief pending the disposal of the preliminary

issue. We make it clear that in the event actual development work on the property is commenced by the Respondent nos.5 to 10, it will be open for the Appellant to move the learned Single Judge for grant of further ad-interim relief in terms of sub-Section 2 of Section 9A of the Code. All contentions of the parties in that behalf are kept open.

5. In view of disposal of Appeal No.242 of 2015, Notice of Motion No.745 of 2015 does not survive and stands disposed of as such.

(PD.NAIK, J.)

(A.S.OKA, J.)

MST