

pmw

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

**APPEAL (L.) NO.157 OF 2016  
IN  
NOTICE OF MOTION NO.601 OF 2016  
IN  
SUIT NO.59 OF 2016**

|                                       |                 |
|---------------------------------------|-----------------|
| Mr. Amardeep Patheja and Anr.         | ... Appellants  |
| Versus                                |                 |
| Juhu Real Estate Developers Pvt. Ltd. | ... Respondents |

Mr. Rahul Chitnis a/w Ashok Verma i/by M/s. S. Pathak & Co. for the Appellants.

Mr. Amay Deosthale a/w Ms. Vimala Shah i/by M/s. Hariani & Co. for the Respondents.

**CORAM : A.S. OKA &  
A.A. SAYED, JJ.**

**DATE : 5<sup>th</sup> AUGUST, 2016**

**PC.**

1           The Appellants who are the original plaintiffs have taken an exception to the order dated 4<sup>th</sup> July, 2015 passed by the learned Single Judge on Notice of Motion taken out by the Applicants for interim reliefs in the Suit filed by them. The impugned order reads thus :-

- “1. Heard the learned Advocates appearing for the parties.
2. The Applicants/Plaintiffs have claimed that they are entitled to a flat admeasuring carpet area of 1894 square feet in accordance with their Agreement with the Defendant. The learned Advocate for the Defendant

on instructions undertakes not to sell, alienate, encumber, part with possession and/or create third party rights in respect of one flat admeasuring 1627 square feet (carpet area) between 5<sup>th</sup> and 7 floors of the new building namely Equest. The undertaking is accepted.

3. Place the Notice of Motion for hearing and final disposal on 23<sup>rd</sup> December, 2015.”

2           We find from the impugned order that it is not a judgment within the meaning of Letters Patent as even the prayer for grant of ad-interim relief has not been decided by the learned Single Judge. The learned Single Judge has merely recorded undertaking of the defendants and kept the Notice of Motion for hearing on 23<sup>rd</sup> December, 2015.

3           Therefore, in our view, the Appeal itself is not maintainable. The learned counsel appearing for the Appellants states that Notice of Motion is not being finally heard.

4           If the Notice of Motion is not being finally heard, it is always open for the Appellants to move the learned Single Judge for grant of appropriate ad-interim relief as prayed for in the said Notice of Motion. Needless to add that if such an application is made, the learned

Single Judge will decide the same in accordance with law. Subject to what is observed above, the Appeal is dismissed.

5           We make it clear that we have made no adjudication on merits of the pending Notice of Motion and the contentions of the parties are kept open. Pending Notice of Motion does not survive and the same is disposed.

**(A.A. SAYED, J )**

**(A.S. OKA, J )**