

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

WRIT PETITION (ST) NO. 1399 OF 2017

M/s R.P.Homes and Anr.

..Petitioners.

Vs

Mr. Alexander M. Rodrigues and
Anr.

.. Respondents

Mr.Dinesh Tiwari a/w Swapnil Ambure i/b Dinesh D.Tiwari &
Associates, Advocates for Petitioners.

Mr. Aashutosh Gole, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 18/01/2017

PC:

1. Not on Board. At the request of Mr.Tiwari taken up for admission. Heard Mr. Dinesh Tiwari, learned counsel for the petitioners and Mr.Aashutosh Gole, learned counsel for respondent no.1.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 23.12.2016 passed by the learned District Judge-7, Kalyan. By that order, the learned District Judge issued notice to the respondents, returnable on 6.1.2017.

3. The petitioners, hereinafter referred to as plaintiffs, have instituted suit on 5.11.2016, inter alia, praying for direction to the defendants to demolish construction carried out in the suit property, among other prayers. During the pendency of the suit, the plaintiffs took out application Exhibit-5 which was rejected on

17.12.2016. Aggrieved by that decision, the plaintiffs preferred Misc.Civil Appeal before the District Court on or about 23.12.2016. By the impugned order, the learned District Judge has simply issued notice to the respondents. The grievance of the plaintiffs is that the learned District Judge ought to have issued injunction restraining the defendants from carrying out construction.

4. Mr.Gole submitted that during the pendency of application Exhibit-5, there is no ad-interim injunction and after hearing both sides, the learned trial Judge rejected the application on 17.12.2016. He further states that the next date of hearing before the District Court is on 31.1.2017.

5. In view thereof, in my opinion, the ends of justice would be served by directing the learned District Judge, Kalyan to decide Appeal itself finally within four weeks from 31.1.2017. Parties assured that they will extend full co-operation for disposal of the Appeal. It is made clear that I have not examined merits of the case. All contentions on merits in the Appeal are expressly kept open.

6. Petition is disposed of accordingly with no order as to costs.

(R.G.KETKAR, J.)