

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

APPEAL FROM ORDER NO.298 OF 2011

M/s.Earnest John & Co. Pvt. Ltd. ..Appellant

V/s.

M/s.John Builders Pvt. Ltd. ..Respondent

Mr.P.K. Dhakephalkar, Senior Counsel i/b Ms.Daya Gupta for the Appellants.

None present for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 05 APRIL 2017

P.C.

1. Mr.Dhakephalkar, learned Senior Advocate for the appellant. None for the respondent, though, the matter is duly notified on the cause list.

2. The challenge in this appeal is to the order dated 01 March 2011, by which, learned Trial Judge, granted certain ad-interim reliefs to the respondent-plaintiffs.

3. This appeal was admitted on 31 March 2011. The order reads thus :-

“Admit.

2. Advocate on record for respondents waives service.

3. Pendency of this Appeal will not operate stay of

the proceedings of the Notice of Motion and the trial Court will expeditiously dispose of the Notice of Motion.”

4. On 31 March 2011 itself, the impugned order was stayed and particular arrangement was directed. The order dated 31 March 2011 in Civil Application No.432 of 2010 reads thus :-

“Heard the learned senior counsel appearing for the applicants and the learned senior counsel appearing for the respondents. Prima facie, it appears to me that by way of ad-interim relief, a very drastic order of ad-interim injunction has been passed by the trial Court. Looking to the wide nature of the prayer clause (a) of the Notice of Motion which has been granted by way of ad-interim relief, the operation of the impugned order will have to be stayed. However, a workable order will have to be passed till the Notice of Motion is decided. Hence, I pass the following order :

:: O R D E R ::

(a) The operation of the impugned order is stayed.

(b)i. On production of entry pass issued by the first respondent bearing the seal of the first respondent, the applicants shall allow the entry of the person producing the pass to the premises held by the respondents without any obstruction.

ii. On production of entry pass issued under the seal of the first respondent, the applicants will allow entry of the cars to the parking area reserved for the respondents or the parking area reserved for the visitors. It is obvious that on production of such entry pass, parking of the cars either in the parking area reserved for the respondents or the parking area reserved for the visitors shall be permitted by the applicants.

iii. In the event, the respondents or the occupants desire to take any goods or articles to their respective premises, on production of intimation in writing under the seal of first respondent produced by the person carrying the said goods or articles, the applicants shall allow goods or articles to be carried to the respective premises without any obstruction. It is obvious that if the goods or articles are carried by respondents/occupiers by a truck or a transport vehicle, the applicants will permit entry of such vehicle in the compound only for the purpose of unloading the goods. However, the driver of such vehicle shall produce intimation or entry pass issued by the first respondent under its seal.

iv. The persons who are allowed to enter building will be entitled to use common toilet in the building.

v. The applicants will permit entry of the respondents

or their representatives to the electric meter room on the production of the intimation in writing by the first respondent.

vi. In the event, there is any difficulty in implementation of this order, parties are liberty to apply.

(c) The aforesaid directions shall continue to operate only till the disposal of the Notice of Motion pending in the trial Court. The Notice of Motion shall be decided on its own merits uninfluenced by the impugned order and this order.

(d) Civil Application is disposed of in the above terms.”

5. In the order of admission of the appeal, it was made clear that the Pendency of this Appeal will not operate stay of the proceedings of the Notice of Motion and the trial Court will expeditiously dispose of the Notice of Motion. Mr.Dhakephalkar, learned Senior Advocate for the appellant however, points out that till date Notice of Motion is pending. This is not proper. By now, the learned Trial Judge should have disposed of Notice of Motion.

6. The suit itself was instituted in the year 2011. Mr.Dhakephalkar, learned Senior Advocate for the appellant states that there is no much progress in the suit. This is evident because

the plaintiffs did not appear to have press for even the disposal of the Notice of Motion, despite specific order of this Court dated 31 March 2011.

7. In the aforesaid circumstances, it will be appropriate that the learned Trial Judge is directed to dispose of the suit itself expeditiously and until, the disposal of the suit the arrangement as is reflected in order dated 31 March 2011 operates. This is the working arrangement, being in operation since 31 March 2011 and therefore, there is no necessity to disturb the same at this stage.

8. The Appeal from Order is disposed of in the aforesaid terms. There shall be no order as to costs.

9. The Civil Applications, if any, stand disposed of.

10. All concerned to act on the basis of the authenticated copy of this order.

(M. S. SONAK, J.)