

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11866 OF 2017**

Mahendrakumar Motilal Banthia & Ors	...Petitioners
<i>Versus</i>	
Bonafide Building Material Suppliers & Ors	...Respondents

Mr Idris M Vohra, *for the Petitioners.*
Mr Prasad Dani, Senior Advocate, *a/w Mr RP Kulkarni, i/b PB*
Kulkarni, for the Respondent No. 2.

CORAM: G.S. PATEL, J
DATED: 7th December 2017

PC:-

1. Heard.

2. The landlord is aggrieved by an order of 31st March 2017 of the Ad-hoc Judge-3, Raigad-Alibag. By this order, the Appellate Court partly allowed an appeal filed by the respondents. That appeal was directed against an order of 13th December 2016 in which the respondents sought an injunction in their declaratory suit against the defendant who is now the petitioner. The Appellate Authority noted that the entity claimed to be a tenant and had filed the suit for declaration and that as a matter of fact the premises had been demolished in the meantime. At no stage had the defendants made provision of alternative premises in the reconstructed building. The

defendant landlord's case seems to be that the original tenant had surrendered possession and that the plaintiffs were not their tenants to begin with. That of course is a matter that falls for determination in the suit itself for the simple reason that if the plaintiff fails to establish tenancy, the landlord need do nothing more.

3. What the Appellate Court did was simply to preserve parties in *status quo*. It granted a limited and restricted injunction restraining the landlord defendant no. 1 from creating a third party interest in the suit property or the proposed building *without reserving an area equivalent to the area that was in possession of the plaintiffs before demolition.* This is not, as the petitioner wrongly imagines, a general injunction in respect of the entire building. It is an injunction restricted to an area equivalent to that claimed to be occupied by the plaintiffs and no more. In fact, the location of that area is not even specified and the landlord evidently has discretion in this behalf as well. If the plaintiff's suit fails, then obviously the injunction will automatically stand vacated on that date.

4. I do not believe that there is any other way to interpret the impugned order. It is not one that, in my view, calls for the slightest interference. The Writ Petition is rejected.

5. I am informed that the landlord owner, defendant no. 1 has taken a plea of maintainability on the ground that the plaintiff is not a registered form and a Writ Petition in that regard has been admitted and the trial of the suit has been stayed. Speaking for myself I do not believe it is in the interest of the landlord to continue

that stay but that is apparently what he seeks. That position will therefore continue.

6. The Writ Petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)