

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO.16528 OF 2017
WITH
CIVIL APPLICATION (ST) NO.16529 OF 2017**

Arun Babu Shinde	...Appellant
<i>Versus</i>	
Kanakia Spaces Reality Pvt Ltd	...Respondent

Mr Milan Desai, i/b PV Nichani, for the Appellant.
Mr Gaurav Joshi, Senior Advocate, i/b RMG Law Asso, for the
Respondent.

CORAM: G.S. PATEL, J
DATED: 27th June 2017

PC:-

1. The Plaintiff is in Appeal against the order of 13th June 2017 vacating the ad-interim relief previously granted on 19th May 2017. The Plaintiff claimed to be in use and occupation of an open space and the septic tank located at an elevation above the area were the Defendant is carrying on work. In the impugned order, the Trial Court found, after the Defendant had filed a reply, that there was an agreement between the Plaintiff and the Defendant, or, at any rate, a predecessor-in-title of the Defendant, by which the Plaintiff agreed to relinquish his rights in respect of this land and the septic tank for

a consideration of Rs.10,00,000/-. It was not disputed before the Trial Court that the Plaintiff did receive Rs.5,00,000/- pursuant to this agreement. All that the Trial Court did was to say that there was a debatable issue on which parties needed to be heard at length. On that basis, the ad-interim order was vacated, and in my view quite correctly.

2. There is no ground for interference at all. The Plaintiff cannot have it both ways. I notice that there is a complete failure to make any mention at all of the Agreement in the Plaint. It was brought out only in the Reply. Even if the Agreement was with the Defendant's predecessor-in-title, that makes no difference; it was admittedly and demonstrably an agreement about this very land and septic tank, and these are the subject matter of the dispute. Therefore, the fact of that agreement ought to have been disclosed. The non-disclosure disentitles the Plaintiff to ad-interim relief either in the Trial Court or here.

3. The Motion is yet pending. It should be heard at the earliest convenience of the Trial Court. Parties will appear before the Trial Court on 6th July 2017 and obtain the necessary directions for filing of an Affidavits in Reply and Rejoinder, and directions for fixing a date for final hearing of the Motion. The Trial Court is requested to dispose of the Motion at the earliest and if possible by 15th September 2017. All contentions are left open.

4. The Appeal is disposed of in these terms.

5. In view of disposal of the Appeal, the Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J.)