

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

**APPEAL FROM ORDER (ST) NO. 19703 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 20516 OF 2017**

Krishna Collection ..Appellant
V/s.
Govind Gabha Patel and anr. ..Respondents

Mr. Chirag Shah i/b Mr. Jitendra J. Shah for the Appellant.
Mr. Mohan Pillai i/b Mrs. Madhavi Pillai for the Respondents.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 18th AUGUST 2017.

P.C.

1] This appeal from order takes an exception to the order dated 21st June 2017 passed by learned City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 1906 of 2017 in S.C. Suit No. 1644 of 2017.

2] The suit is filed by the plaintiff for simplicitor injunction against his brother, who is defendant. The plaintiff seeks injunction against the defendant *qua* the suit premises which the defendant claims that the suit premises is also a place of business for the plaintiff as well as the defendant, whereas the plaintiff claims that it is he alone who is conducting the business in the suit premises.

3] It appears from the record that the parties have filed affidavit in reply and also produced the documents. The Trial Court has taken a view that considering the prayer and nature of the suit, if any relief is granted in deciding the notice of motion, it will amount to decide the suit itself and therefore, the Trial Court has postponed the hearing of the notice motion till the decision of the suit. This view is not correct. Accordingly, the Trial Court is directed to hear the notice of motion and decide the same on its own merits and in accordance with law. The Trial Court may grant relief or reject the same, but that is to be done at the interim stage only.

4] In view of the above, the appeal from order is disposed of. The Trial Court is directed to hear and dispose of the notice of motion on or before 12th October 2017.

5] Liberty is given to the respondents-defendants to file detailed affidavit in reply, if required and the appellant-plaintiff may file rejoinder, if any.

6] Parties to cooperate with the learned Trial Judge in expediting the matter.

7] In view of disposal of main appeal from order, the civil application does not survive and the same is also disposed of

(MRIDULA BHATKAR, J.)