

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST).NO.21654 OF 2017
WITH
CIVIL APPLICATION (ST.) NO.21655 OF 2017
IN
APPEAL FROM ORDER (ST).NO.21654 OF 2017**

Robert CreadoAppellant
Vs.
Mustafa Saifuddin Patanwala ...Respondent

Mr. G.S. Godbode, i/b.Mr. Kunal Bhanage for the Appellant.
Mr. Shashipal Shankar for the Respondent.

**CORAM: MRS. MRIDULA BHATKAR, J.
DATED: AUGUST 11, 2017**

P.C. :

1. This Appeal from Order is filed against the ad-interim order dated 21.07.2017 passed by the learned Judge of the City Civil Court at Mumbai, Dindoshi branch, in draft Notice of Motion in S.C.Suit No.2082 of 2017.

2. As per the case of the plaintiff, the plaintiff and the defendant had entered into a contract on 06.05.2016 in respect of display of the hoardings at the space owned by the defendant. By way of the said contract, the defendant has agreed to pay certain amount i.e. Rs.30 lacs per month for day to day display of the advertisement of two hoardings. It is a contract in respect of the

hoarding site and the defendant owned the hoarding site and which is taken on contract basis for a monthly payment of Rs.30 lacs. The defendant by its notice dated 11.7.2017 terminated the contract for the hoarding site. The said action of the defendant is challenged in the suit. The learned Judge granted ad-interim protection to the plaintiff against the defendant. The learned counsel for the appellant has raised an objection in respect of non-joinder of the party defendant as the suit is not filed against the partnership which is party to the contract. It is further submitted that on 18.07.2017 the defendant has already created third party right and the said third party is required to be made party to the suit. The learned counsel has further submitted that the ad-interim injunction and the relief prayed in the notice of motion, if granted, it will amount to deciding the suit seeking monetary injunction.

3. The learned counsel for the respondent opposed this appeal from order. The learned counsel for the respondent while opposing this appeal from order has submitted that the termination notice given by the defendant/appellant is illegal in view of the terms and conditions of the contract. He further submitted that the third party with whom the appellant claims to

have entered into a contract has withdrawn. He further submitted that the plaintiff may consider and amend the plaint on the point of non-joinder.

4. The appeal from order is against an ad-interim relief granted by the trial Court. Reply is filed by the appellant/defendant. After hearing the submissions of learned counsel for both the parties and perusal of documents on record, I am of the view that the interpretation of the terms and conditions mentioned in the contract is required. So it is appropriate to hear the notice of motion. Hence, the following order is passed.

ORDER

- (a) Appeal from order is hereby summarily dismissed.
- (b) The trial Court to decide the Motion within six weeks on merits. All contentions are kept open.
- (c) Ad-interim order passed by the trial Court will not come in the way of the appellant/defendant, if the appellant/defendant wants to give any other notice pursuant to the impugned contract.

(MRIDULA BHATKAR, J.)