

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

**APPEAL FROM ORDER (ST.) NO. 23741 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 23743 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 23741 OF 2017**

Virendra Vasant Kapdi & Ors. ...Appellants

Versus

Vitthal Gabaji Kapuskar & Ors. ...Respondents

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Mr.Nitin Gangal for the Appellants.
Mr.Pravin Samdhani, Senior Advocate a/w. Mr.Farhan D. i/b. Wadia
Ghandy and Co. for Respondent Nos. 3 and 4.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATE : DECEMBER 04, 2017

P.C.:

1. This Appeal from Order is directed against the order dated 13th July, 2017 passed by the learned Judge, City Civil Court, Gr. Bombay thereby rejecting the ad-interim relief in Notice of Motion No. 2910 of 2016 with costs of Rs. 2000/- to each of defendant nos. 2 to 4.

2. The Notice of Motion was taken out by respondent nos. 2 to 4/ defendant nos. 2 to 4 under Order 39 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the CPC”). However, respondent nos. 2 to 4 have challenged the jurisdiction of the City Civil Court. The preliminary issue was framed by the trial Court under Section 9A of the CPC. Therefore, the appellants/plaintiffs, pending the preliminary issue, moved prayer under Section 9A (2) of the CPC seeking ad-interim relief against the defendants, which was rejected by the trial Court. Hence, this Appeal from Order.

3. At the outset, it is informed by the learned counsel for respondent nos. 3 and 4 that the evidence of the plaintiffs on issue under Section 9A of the CPC is over and defendant nos. 2 to 4 have to lead evidence on the preliminary issue.

4. This fact is confirmed by the learned counsel for the appellants.

5. This is a dispute in respect of eligibility of the accommodation in the co-operative housing society of the mill workers. Hence, the preliminary issue is raised and is to be decided by the trial Court. The suit is pending since 2003. Under such circumstances, I do not find

any good reason to grant ad-interim relief in favour of the appellants/plaintiffs. I dispose of this Appeal from Order with following order:-

ORDER

- (i) The trial Court to proceed with the matter and decide the issue under Section 9A of the CPC on or before 30th January, 2018. Parties to cooperate the trial Court
- (ii) Parties to appear before the trial Court
- (iii) The order of the trial Court rejecting the ad-interim relief is maintained, however, the order of imposing the costs of Rs. 2000/- on each of defendant nos. 2 to 4 is set aside.

6. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)