

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER ST. NO.35542 of 2017
WITH
CIVIL APPLICATION ST. NO.35543 OF 2017
IN
APPEAL FROM ORDER ST. NO.35542 of 2017**

Shri Aswani Construction ... Applicant

Vs.

Shri Anand Eknath Mankar & Ors. ... Respondents

Mr.R.S. Datar i/b Sachin Dhakephalkar, for the Applicant
Mr.Nachiket Khaladkar for Respondents

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: DECEMBER 22, 2017

P.C.:

1. This Appeal from Order is directed against the order dated 14.11.2017 passed by the learned District Judge – 1, Commercial Court, Pune in Application below exhibit 20 in Special Civil Suit No.76 of 2017, directing the other side to file say. Earlier, the suit was filed before the Regular Court where the order of status quo was passed on 13.10.2017 by the learned 9th Joint Civil Judge, Senior Division, Pune. However, the learned Judge returned the plaint under Order 7 Rule 10 on 26.10.2017. At that time, the order of status quo was not

continued. Then, the plaint was presented before the Commercial Court. It was numbered and the application for interim relief of status quo was prayed by the plaintiff on the said application. The trial Court has passed the order of calling the other side to submit say on 14.11.2017.

2. The learned Counsel for the respondent in the present Appeal from Order submits that in the said suit, the other side has filed its say on 17.11.2017 and this application i.e., exhibit 20 in Special Civil Suit No.76 of 2017 is to be heard on 9.1.2018.

3. The learned Counsel for the appellant submits that the bungalow is in his possession and his possession will be disturbed by the respondents. The respondents submit that the suit bungalow is in their possession. Therefore, before granting any order of injunction, it is necessary to verify from the documents and pleadings as to who is in the actual possession of the suit bungalow, which is possible only after hearing the matter at length and going into the documentary evidence.

4. The learned Judge of the Commercial Court, Pune, is going to decide the matter after hearing the parties on 9.1.2018. However,

the parties want the matter to be preponed, as the appellant/plaintiffs apprehend that they will lose possession if protection is not granted, the matter can be preponed and is accordingly posted now after reopening of the trial Court i.e., 1st January, 2018. The record shows that from 26th October, 2017 till today, the order of status quo is not in existence as the plaint was returned on 26.10.2017. Therefore, no urgency is made out as on today and hence, the matter is kept on 1.1.2018 before the Commercial Court for hearing of the application for status quo i.e., exhibit 20. Parties to cooperate.

5. Appeal from Order and the Civil Application are disposed of accordingly.

(MRIDULA BHATKAR, J.)