

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

**APPEAL FROM ORDER STAMP NO. 655 OF 2018
WITH
CIVIL APPLICATION STAMP NO. 657 OF 2018**

Jay Kalimata Engineering ... Appellant
Versus
Pimpri Chinchwad New Town
Development Authority and another ... Respondents

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Mr. R. S. Apte, Senior Advocate i/b Mr. Rajesh S. Jadhav,
Advocate for the Appellant.

Mr. Ketan A. Chothani, Advocate for respondent No.2.

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CORAM : A. S. CHANDURKAR, J.

DATE : 10th DECEMBER, 2018.

P. C.:

1. The original plaintiff has filed this appeal challenging the order passed by the trial Court rejecting the application for grant of temporary injunction so as to restrain the defendant No.2 from making any construction on industrial plot No.122 pursuant to his bid being accepted.

2. According to the plaintiff, in response to three public notices the plaintiff had submitted online tender on 17/02/2018. As it was the only tender submitted, the plaintiff stated that same ought to have been accepted. However, the defendant No.1 allotted the tender to the defendant No.2 thus giving rise to the

suit challenging that allotment. In that suit the plaintiff sought interim injunction so as to restrain the defendant No.2 from making any construction on the allotted plot. By the impugned order said application was rejected.

3. Shri. R. S. Apte, learned Senior Advocate for the appellant submitted that the plaintiff's tender being the only eligible tender and there being various shortcomings in the tender submitted by the defendant No.2, the defendant No.1 was not justified in accepting the bid of the defendant No.2. Various documents on record indicate the legal right of the plaintiff. Without considering these documents the injunction was refused. It is further submitted that if any construction is permitted to be made on the said plot, the purpose of approaching the Court would be frustrated.

4. Shri Ketan Chothani, the learned Counsel for the respondent No.2 supported the impugned order. According to him the tender submitted by defendant No.2 was complete in all respects and it was rightly accepted by the defendant No.1. The construction sought to be undertaken by the defendant No.2 could not be stalled. The suit was at the stage of recording evidence and hence no discretion deserves to be exercised in favour of the appellant.

5. Heard learned Counsel for the parties and perused the documents on record. The reply filed by defendant No.1 *prima-facie* indicates that all bids were scrutinised in the presence of the plaintiff and defendant No.2. No objection whatsoever was raised

by the plaintiff at that stage. Hence, the discretion as exercised by the trial Court cannot be faulted. It is seen that the order passed by the trial Court dated 6th December-2017 and the suit has reached the stage of recording evidence. Thus, by protecting the respective interests of the parties, an adjudication on merits can be directed.

6. Accordingly, by observing that any construction made by the defendant No.2 would be subject to final outcome of the civil suit filed and by further clarifying that the observations made in the impugned order would not influence the trial Court while deciding the suit, the Appeal From Order stands disposed of. Needless to state that the defendant No.2 would not claim any equity for the construction undertaken by him.

7. In view of disposal of the appeal, pending civil application does not survive and the same is also disposed of.

(A. S. CHANDURKAR, J.)