

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

WRIT PETITION NO. 806 OF 2017

Smt.Subhadra Narayan Mali & Anr.	...	Petitioners
V/s.		
Krushna Jambu Mali & Anr.	...	Respondents

- Mr.Manoj A. Harit a/w. Mr.Akhil A. Khupade for the Petitioners.
- Mr.Ramdas A. Shelke for Respondent No.1.
- Mr.A.A. Alaspurkar, A.G.P. for Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 28th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for both the parties.
- 2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 19th November 2016 passed by the District Judge-2, Islampur, thereby allowing Miscellaneous Civil Appeal No.53 of 2016 which was preferred against the order dated 7th September 2016 passed on application at Exhibit-6 in Regular Civil Suit No. 391 of 2016 by the 5th Jt. Civil Judge Junior Division, Islampur.
- 3] As a result of the order passed by the Appellate Court, the

Petitioners are restrained from carrying out further construction, which was closing the two windows and air hole in the house property of the Respondent No.1.

4] The trial Court has, on the basis of the photographs produced before it and submissions advanced before it, came to the conclusion that the Respondent No.1 has yet to establish his right of light and air and the photographs show that, he has newly constructed the two windows and air hole and therefore, rejected the application for interim injunction.

5] The Appellate Court, however, held that, if the construction is allowed to be carried out, then it will obstruct the right of air and light of the Respondent No.1's property and therefore, restrained the Petitioners from carrying out construction.

6] Both the parties are coming before the Court with rival submissions. According to the Petitioners, Municipal Council has sanctioned the plan for the proposed construction; whereas, according to the Respondent No.1, no such plan is sanctioned. There is also the disputed question of fact, as to, whether the two windows and air hole are constructed recently or they were in existence since long. It is also a question of fact, as to, whether the Respondent No.1 is having this

easementary right of air and light from these two windows and air hole either by way of prescription or by way of necessity. In view thereof, as all these factual aspects are involved, which cannot be decided at this stage, this Court is of the opinion that, interest of justice would be served, if the trial Court is directed to expedite the hearing of the suit, so that the factual questions and issues will be decided finally.

7] At this stage, learned counsel for the Petitioners submits that, the Petitioners had undertaken the construction of two rooms, they have also collected the material for construction of the said rooms, the material is laying unused and being wasted because of the stay to the construction. In view thereof, a proposal is made by him that, out of these two rooms, the Petitioners will construct one room, which will not in any way affect the closure of two windows or air hole of the property of the Respondent No.1.

8] In my considered opinion, there is no reason to reject this proposal, as the Respondent No.1 is concerned only with respect to construction relating to closure of two windows and air hole and if the Petitioners are making the construction of other room which will not have the effect of closing the two windows and air hole, there is no harm if the Petitioners are permitted to carryout the construction of the other room, after furnishing undertaking before the trial Court,

within two weeks from the date of this order that, they will carryout the construction of one room only, which construction will not have the effect of closing these two windows and air hole of the property of the Respondent No.1. Needless to say that, the proposed construction would be as per the Rules and Regulations prescribed by the Municipal Corporation.

9] With this modification, the impugned order passed by the Appellate Court is confirmed.

10] Writ Petition is disposed of with direction to the trial Court to decide the suit as expeditiously as possible and preferably within a period of three months from the receipt of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]