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

**APPEAL FROM ORDER NO.312 OF 2018
WITH
CIVIL APPLICATION NO.408 OF 2018
IN
APPEAL FROM ORDER NO.312 OF 2018**

Mahatma Co-op. Housing Society
Ltd.

... Appellant.

V/s.

Piraji Chandrabhan Khabale
and anr

... Respondents

Mr. Pradeep J. Thorat, i/by Dhananjay Rajendra
Pratapsingh, for the appellant.

Mrs. Madhuri More, for respondent corporation.

Mr. Abhijeet Parba a/w Mr. Jaswani Khatu i/by Ms.
Prerna R. Lalchandani, for respondent No.3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd SEPTEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the appellant and respondent.
- 2] This appeal takes an exception to the order dated 15.1.2018, passed by the City Civil Court, Mumbai, in the Notice of Motion No.127 of 2018 in L.C. Suit No.42 of 2018.
- 3] The said Notice of Motion was taken out by the present appellant, for the interim injunction restraining respondents from

carrying out construction of Storm Water Drain in the property of the appellant-plaintiff and for mandatory injunction directing respondent to restore partly demolished compound wall on the southern side of the appellant society.

4] It is the case of appellant society that it is situated on plot of land bearing Nos.128, 130, 131, 355, Golibar Road, Santacruz (E) Mumbai. Respondent No.3 developer has carried out construction of 44 ft. wide D.P. road on the south side boundary of appellant society. There are directions by respondent Municipal Corporation to respondent No.3, to erect Storm Water Drain, within his holding. However, respondent No.3 is trying to construct the said Storm Water Drain in the property of the appellant society by demolishing the compound wall. Hence, respondent No.3 be restrained from doing so.

5] However, as rightly observed by the trial Court, the appellant has in its plaint itself stated that the society is surrounded by the compound wall. In such situation, it was for the appellant to prima facie show as to how the said construction of Storm Water Drain, undertaken by respondent No.3 is by making encroachment on the land of appellant society. It is neither the case of Corporation nor S.R.A., that respondent No.3 is making such construction by encroaching in the land of appellant. It is also nowhere stated or

brought on record that the construction of Storm water Drain, undertaken by respondent No.3, is by way of encroachment. In such situation, the trial Court has rightly held that no case is made out for temporary injunction especially when respondent No.3 is carrying out construction of Storm water Drain as per sanctioned plan. The trial Court has considered this aspect and exercised its discretion in proper perspective. In the Appellate jurisdiction, no interference is warranted in the said discretion.

6] In view thereof, the Appeal from Order holds no merit, hence stands dismissed.

7] At this stage learned counsel for the appellant seeks extension of the ad-interim relief granted by this Court. Learned counsel for respondent has strongly resisted the same.

8] As the ad-interim relief was granted only till decision of this appeal, there is no question of extending the order of ad-interim relief. Request is rejected.

9] In view of dismissal of Appeal from Order, pending Civil Application therein becomes infructuous and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]