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

**APPEAL FROM ORDER NO.425 OF 2018
WITH
CIVIL APPLICATION NO.561 OF 2018
IN
APPEAL FROM ORDER NO.425 OF 2018**

James Selwynpaul and ors

... Appellants.

V/s.

St Michael's Church
and ors

Respondents

Mr. Kishore Jain a/w Ms. Priyal C. i/by M/s Dilip Sabale, for the appellant.

Mr. P.S. Dani, Senior Counsel a/w Mr. Cheria N Lapashiya I/by Niranjan & Co., for respondent No.3.

Mr. G.S. Godbole a/w Mr. Ashok V. Jain i/by M/s A. V. Jain Associates, for respondent No.8

Mr. Nigel Suraismy for respondent Nos. 1 & 2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the appellant and learned counsels for respondents.

2] This appeal is directed against the order dated 9.3.2018, passed by the City Civil Court, Mumbai, in L.C. suit No.875 of 2011,

whereby the trial Court has refused to grant leave to register the Notice of Motion, preferred by the appellant and it appears to be only on the count that the hearing of the suit was expedited by this Court. In my considered opinion, even if the hearing of the suit is expedited by this Court, that cannot be a sole ground not to entertain the Notice of Motion which was filed in view of the subsequent amendment in the plaint. Moreover, as can be seen from the Roznama of the trial Court proceeding, the hearing of the suit is in progress. The evidence of plaintiff and defendant No.1 is also recorded. Hearing of the suit can be proceeded further and need not be stayed, but that cannot be the reason, for the trial Court to refuse to grant leave to register the Notice of motion. The trial Court should have decided the Notice of Motion on its own merits. Hence, the order of refusing leave to register the Notice of Motion and to decide the same cannot be upheld.

3] Accordingly without entering into the merits of the Notice of Motion, and even without considering the rival submissions and contentions advanced at Bar, it is directed that the trial Court shall grant leave to register the Notice of Motion and decide it on its own merits in accordance with law. It is clarified that mere registration and hearing of Notice of Motion will not act as stay to the hearing of the suit. Hence, the trial Court shall proceed with the hearing of the suit

also which has been expedited by this Court in earlier proceeding.

4] Appeal is accordingly allowed in above terms.

5] In view of disposal of Appeal from Order, Civil Application No.561 of 2018 stands disposed off.

6] Learned counsels for respondents submit that they are filing their reply to the Notice of Motion within a week before the trial Court.

[DR.SHALINI PHANSALKAR-JOSHI, J.]