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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St.) No. 20038 OF 2018
WITH
CIVIL APPLICATION (St.) No. 20039 OF 2018

Dr. Prem Nichani … Appellant
Vs.
M/s. Vintage Advertising Pvt. Ltd. & Ors. … Respondents

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Mr. Ajit J. Shobhawat, for the Appellant.

Mr. Navin Parekh a/w Ms. Hetal Patel, for Respondent No. 4.

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CORAM : V. M. DESHPANDE, J.

DATE : JULY 18, 2018

PC :-

1. Heard the learned counsel for the Appellant. Present appeal questions the correctness of the order passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, dated 7.6.2018 passed in Notice of Motion No. 2405 of 2016, taken out in S.C. Suit No. 2662 of 2007. By the impugned order, the court below has permitted the defendant No. 4 in the suit to re – erect the hoarding of the same dimensions after necessary

measurements are carried out by the court commissioner, and also directed him to give undertaking to the court that in case suit goes against him, he will remove the same hoarding.

2. According to the learned counsel for the Appellant, in paragraph 3 of the impugned order, the learned Judge has incorrectly observed that consent decree passed by this Court was in favour of defendant No. 4 instead of his submission that it was granted in favour of the plaintiff. It is also his submission that granting this relief will render suit infructuous, which was filed on behalf of the Appellant / plaintiff before the court below since at the ad-interim stage the relief of mandatory injunction is granted. Learned counsel for the Appellant fairly states before the Court that the hoarding in question is standing since last 10-12 years. The motion was required to be moved before the court below on behalf of Respondent No. 4 since the standing hoarding became weak and to that effect certificate from the structural engineer was also produced on record.

3. The court below found that continuance of the old

hoarding will endanger the property and life of passersby. In that view of the matter, the court below has directed that after removal of the old hoarding, it can be re-erected after measurements are taken by the Court Commissioner to ascertain the dimensions of the existing hoarding, so that new hoarding will not be in excess of the existing hoarding in dimensions. The learned Judge of the court below has taken care that there shall not be excessive dimensions of the hoarding. The suit is pending. The court below has also directed defendant No. 4 to give an undertaking in case the suit goes against him, he will remove the same within 15 days from the date of the decree. In that view of the matter, the order passed by the court below has taken care of interest of all the parties warranting no interference from this Court. Hence, appeal is dismissed. No costs. Pending civil application in this appeal also shall stand dismissed.

4. At this stage, learned counsel for the Appellant states that evidence of the plaintiff has already commenced. In that view of the matter, it is expected from the court below to decide

the suit as expeditiously as possible and in any case within one year from the date of receipt of this order, on its own merit.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath