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

WRIT PETITION NO.10009 OF 2016

Kagal Nagar Prishad, Kagal	...	Petitioner
V/s.		
Suresh Balu Koravi and ors	...	Respondents

Mr.Tanaji Mhatugade, for the Petitioner.
Mr. Sandeep S. Koregave, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondent.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the concurrent finding of fact recorded by two Courts below, thereby allowing respondent's application and directing the petitioner, by interim mandatory injunction to reconstruct respondent's demolished toilet and bathroom, within a period a month from the date of the order.

3] As per case of the respondent, immediately on receipt of the notice dated 23.5.2014, received from the petitioner, bringing to his notice that he has carried out illegal construction of the toilet on

the public road and he should remove the same within 8 days, respondent has filed a suit before the trial Court bearing R.C.S. No.95 of 2015, seeking relief of injunction restraining the petitioner from demolishing the said construction. Alongwith the suit, respondent has also filed an application for interim injunction to that effect at Exh.5. However, the petitioner sought time to file say to the said application and in the meanwhile the petitioner demolished the said construction. Hence, respondent filed an application for mandatory interim injunction directing the petitioner to restore demolished construction of the toilet.

4] Both the trial Court and the Appellate Court, finding that during the pendency of the suit and application for interim injunction, the petitioner has demolished the said construction without even ascertaining whether it was illegal or whether it was by way of encroachment and therefore, considering the grave hardship that may cause to the respondent by demolition of the construction of toilet, allowed the said application for interim mandatory injunction.

5] While challenging this order of the trial Court and the Appellate Court, the submission of learned counsel for the petitioner is that the respondent is not even the owner of the said property as he has initiated the construction on the public road and therefore, the petitioner was perfectly justified in demolition of the same. However,

learned counsel for respondent has submitted that the said construction is in the property owned by the respondent and in support of his submission, he has placed reliance on the City Survey record.

6] In my considered opinion, at this interim stage, this Court cannot enter into the question whether the said construction was by way of making encroachment or it was illegal or authorized as that question will be decided at the time of final hearing of the suit. For the purpose of deciding the present application for interim mandatory injunction which was filed by the respondent, both the trial Court and the Appellate Court have arrived at a finding of the fact that the said construction was demolished after filing of the suit and seeking time to file written statement and therefore, as it was done during the pendency of the suit and without even establishing that the said structure was by way of encroachment or illegal and considering the grave hardship, which is definitely being caused to family of the respondent, which consists of two female members, the facts of the present case definitely justify the order of interim mandatory injunction. Hence no interference is warranted in the impugned order passed by the trial Court and confirmed by the Appellate Court.

7] At this stage, it is submitted by learned counsel for the respondent that despite the impugned order, the petitioner has not at

all restored the said construction and therefore, the application under Order 39 Rule 2(A) of Code of Civil Procedure is also filed. It is expected that the trial Court shall- decide the said application as expeditiously as possible.

8] The writ petition, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]