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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 168 OF 2015
WITH
CIVIL APPLICATION No. 212 OF 2015
WITH
CIVIL APPLICATION No. 214 OF 2015

Govindrao Yadavrao Sable ... Appellant
Vs.
Santoshi Shatilal Muthiyan & Ors. ... Respondents

Mr. P. K. Dhakephalkar, Sr. counsel a/w Rahul D. Motkari, for
the Appellant.

Mr. Vivek Salunke a/w Tushar Kadam I/b MDP & Partners, for
the Respondent Nos. 1 and 2.

Mr. R. S. Apte, Sr. counsel a/w Aniruddha A. Garge, for
Respondent No. 5.

CORAM : V. M. DESHPANDE, J.

DATE : JUNE 25, 2018

PC :-

1. Present appeal arises out of order passed by the
learned Civil Judge, S. D. Nashik dated 1st October, 2014 below
Exhibit 5 in Special Civil Suit No. 308 of 2014, rejecting
plaintiff's application for injunction.

2. In the pending appeal, Appellant has filed Civil

Application No. 214 of 2015 for joining non-applicant No. 5 – Viva Highways Ltd. as party respondent to the present appeal. The application is allowed. Viva Highways Ltd. is permitted to join as Respondent No. 5 in the present appeal. Civil Application No. 214 of 2015 is accordingly disposed of.

3. Learned counsel for the newly added respondent, viz. Respondent No. 5, Mr. Aniruddha Garge submits that the appeal against the order against Respondent No. 5 was not maintainable at all since the said respondent is not party defendant in the suit. To that, learned senior counsel for the Appellant submits that the plaintiff has already filed an application for joining Viva Highways Ltd. as party defendant in the suit vide Exhibit 46 on 10.11.2014 and it is still pending before the trial court.

4. It is also an admitted position that during pendency of the suit Respondent No. 5 has purchased the property. Learned senior counsel for the Appellant submits that this property is purchased by Respondent No. 5 even after registration of lis pendens agreement with the Registrar of

Assurances.

5. In my view, following order will be sufficient to take care of the interest of the parties:

- (i) Appeal from order is hereby disposed as withdrawn with no order as to costs, as prayed by the Applicant;
- (ii) The impugned order does not require any interference since it an interim order;
- (iii) If occasion arises, it is always open for the plaintiff to move for interim relief before the court below, in accordance with law;
- (iv) Learned trial court is directed to decide Exhibit 46 within a period of 8 weeks from today.
- (v) It is made clear that any transactions if any, occurring during pendency of the suit shall be subject to final result of the suit.
- (vi) Needless to state that all pending applications filed in the appeal do not survive & disposed of.

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

Vinayak Halemath