

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

**APPEAL FROM ORDER (ST.) NO.3916 OF 2019
WITH
CIVIL APPLICATION (ST.) NO.11788 OF 2019 (Not on board)**

Sanjay Lokumal Jagasia & anr.	... Appellants
Versus	
Rose Mary Co.Op. Housing Society Ltd.	... Respondent

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Mr. J. B. Saha I/b. Mr. Manish N. Bijutkar for the Appellants.
Mr. Vinay M. Bhate for the Respondent.

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CORAM : M. S. KARNIK, J.

DATE : 17th JULY, 2019.

P. C.:

1. Heard learned counsel for the appellants.

2. The order under challenge is dated 5.12.2018 passed by the Judge, City Civil Court, Mumbai dismissing the Notice of Motion No.1227 of 2018 filed by the plaintiffs for direction to the defendant to remove notice board placed by the defendant's Society informing the public at large about pending litigation and to restrain the defendant from indulging in such type of activities in future.

3. The appellant has filed a suit for declaration in respect of suit property i.e. Unit/Flat No.A/1 and A/2 situated at Rose Mary Co.Op. Housing Society Ltd, Malad (West), Mumbai and for commercial purpose. Pending the suit the Notice of Motion is filed for declaration to the respondent to remove the notice board placed.

4. My attention is invited to the notice board putting up the following notice :-

NOTICE

**REGARDING FLAT N.A 1-2, SUIT N.387 OF 2017
IS PENDING IN CITY CIVIL COURT AT DINDOSHI
WITH RESPECT TO THE SAID FLAT.
TRESPASSERS WILL BE PROSECUTED.**

**BY ORDER OF THE MG. COMMITTEE
ROSE MARY CO-OP.HSG.SOC.LTD.**

5. There is no dispute that the suit is pending between the parties. On the last date of hearing I had called upon the respondent as to whether they are willing to delete the words “trespasser will be prosecuted” from the notice board. Learned counsel for the respondent on instructions states that they are willing to remove these words.

6. In my opinion, rest of the contents are mere information to the public at large about the pending of the dispute in the City Civil Court in respect of the said flat. Obviously there is no injunction and no proceedings have been taken out at the instance of the Society restraining the appellants from entering into any agreement for leave and license and for letting out the premises or allowing creation of third party interest in the suit property.

7. Learned counsel for the appellants would contend that in view of this notice no party would be willing to enter into any agreement with the appellants. This according to me is no reason for directing the Society to remove the notice board by an interim order during the pendency of the suit. Learned counsel for the appellants further expressed an apprehension that in case the third party interest are to be created or premises are to be let out , the Society may not grant their no objection. This is only an apprehension and in the event the Society refuses to grant no objection, the appellants are always at liberty to approach the appropriate forum for appropriate reliefs.

8. The statement of the learned counsel for the respondent on instructions that the sentence “trespasser will be prosecuted” would be deleted from the notice board is accepted. The same is to be done forthwith.

9. I therefore do not see any reason to interfere with the order passed by the Trial Court.

10. Considering the controversy if a request is made by the appellants for expediting the suit before the Trial Court, the Trial Court in its discretion and considering the pendency position may consider the request so made on its own merits.

11. The Appeal is disposed of.

12. Needless to mention that the Trial Court to proceed with the suit on its own merits and in accordance with law.

13. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

(M. S. KARNIK, J.)