

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

**APPEAL FROM ORDER (ST.) NO. 5437 OF 2019
WITH
CIVIL APPLICATION (ST.) NO. 5438 OF 2019
IN
APPEAL FROM ORDER (ST.) NO. 5437 OF 2019**

Moon Star Tower Residents Welfare
Society & Ors.

....Appellants

V/s.

M.S. Builders & Developers and Ors.

....Respondents

Mr. Ashish Mishra i/b. Khan Enamul Haq for the appellants.
Mr. Mohammed Wasim Qureshi I/b. Qureshi and Associates
for R.Nos.1, 2 and 3.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 06th MARCH, 2019.**

P.C.:

. With consent, heard finally at the stage of admission.

2. By the impugned order dated 04/02/2019, the learned Trial Judge has vacated the ad-interim relief mainly on the ground that the appellant / plaintiff was not ready to proceed with the matter. The records indicate that by order dated 28/03/2018, the learned Judge of City Civil Court, Dindoshi, Borivali Division, Mumbai had granted ad-interim relief and had thereby restrained the respondent nos.1 to 3 from constructing 9th floor on the 'Moon Star Tower' situated at CTS No.353, Sultanabad Behram Baug, Village Oshiwara, Mumbai and

demolishing overhead water tank on the terrace above 8th floor of the building till filing of their reply.

3. The records indicate that the said ad-interim relief was extended from time to time. The said ad-interim relief was vacated on 04/02/2019 as appellant / plaintiff was not ready to proceed with the matter. The records do not indicate that the appellant delayed the matter or had sought adjournment in previous hearings. The learned counsel for the appellant also states that pleadings are now completed and that the appellants are now ready to argue the matter.

4. Considering the above facts and circumstances, following order is passed :-

- (a) Appeal is allowed.
- (b) Impugned order dated 04/02/2019 is set aside.
- (c) Ad-interim relief granted by the trial Court is extended till 18/03/2019.
- (d) Parties are directed to appear before trial Court on 18/03/2019 for further orders.
- (e) Trial Court is directed to dispose of the Draft Notice of Motion in L.C. Suit No.764/2018 as expeditiously as possible and in any event within a period of two months from the date of this order.

5. Appeal stands disposed of in the above terms. Civil Application stands disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)