

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 24484 OF 2019
WITH
CIVIL APPLICATION (ST) NO. 24485 OF 2019
IN
APPEAL FROM ORDER (ST) NO. 24484 OF 2019

M/s Sardar Realty Builders and Developers **... Appellant.**

Versus

M/s Ess Bee Enterprises & Ors. **... Respondents.**

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Mr. Atul Damle, Senior Advocate a/w Mr. Suresh M. Sabrad, Mr. Yuwraj D. Patil, Mr. Amey C. Sawant for Appellant.

Mr. J. Reis, Senior Advocate a/w Mrs. Madhuri More for Respondent-MCGM

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CORAM : S. C. GUPTE, J.

DATE : 17 SEPTEMBER, 2019

P. C. :

1. The present appeal from order challenges an ad-interim order passed by the Bombay City Civil Court at Dindoshi. By the impugned order, the trial Court has rejected the application for ad-interim relief filed by the Appellant (Original Plaintiff).

2. The controversy in the ad-interim application was, whether the Appellant was entitled to restrain Respondent No.1 herein (Original Defendant No.1), who was a nominee or agent of Municipal Corporation of Greater Bombay, from constructing toilet blocks on the suit property.

The Plaintiff's case before the Court was that, they were owners and developers of the suit property under a Slum Rehabilitation Scheme; that their application was approved by the Chief Executive Officer of SRA; and the Corporation could not have carried out, or authorized any person to carry out, construction of any toilet block in the suit property. The trial Court rejected the Plaintiff's application for ad-interim relief on the ground that the Corporation was intending to reconstruct toilet blocks originally existing at the site under "Swachh Bharat Mission" and that such reconstruction ought not to be obstructed by the Plaintiff. That order has been challenged in the present appeal.

3. After the matter is heard at some length, it is agreed between the parties that no toilet blocks shall be constructed in the suit property by the Respondents pending the hearing and final disposal of the notice of motion and the motion itself may be taken up for hearing by the trial Court and disposed of expeditiously.

4. In accordance with the aforesaid agreement, the present appeal from order is disposed of in terms of the following order :-

(A) The Respondents shall not construct any toilet block, within the suit property pending the hearing and final disposal of the notice of motion.

(B) The Respondents (defendants) shall file their respective

replies to the notice of motion within a period of three weeks from today.

(C) The Appellant (plaintiff) may file its rejoinder within two weeks thereafter.

(D) The trial Court shall hear the notice of motion and dispose of the same within a period of six weeks of the plaintiff filing its rejoinder.

(E) If, and to the extent, any digging has been carried out in the suit property for construction of toilet block by the Respondents, it will be permissible to the Appellant to do the work of filling up; no other construction in the area of the proposed toilet block which was being constructed by the Defendants, shall be carried out by the Appellant till the notice of motion is heard and disposed of by the trial Court.

(F) Any activity carried out by the Appellant in the area marked for the proposed toilet block, including the filling up of work carried out therein in accordance with this order, shall be subject to the outcome of the notice of motion, and without prejudice to the respective rights and contentions of the parties.

5. In view of the disposal of the appeal from order, the Civil Application does not survive and the same is disposed of.

(S. C. GUPTE, J.)