

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

**APPEAL FROM ORDER NO. 114 OF 2018
WITH
CIVIL APPLICATION NO.151 OF 2018**

Mr. Madhavlal Narayanlal Pittie ..Appellant

v/s.

Pramodkumar Jagatnarayan Shrivastav ..Respondent

**WITH
APPEAL FROM ORDER NO. 120 OF 2018
WITH
CIVIL APPLICATION NO.161 OF 2018**

Mr. Madhavlal Narayanlal Pittie ..Appellant

v/s.

Lalji Uditnarayan Dube ..Respondent

Ms. Amita Shukla-Castelino I/b. B.N.Shukla & Co. for the Appellant.
Mr. J.B.Mishra for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 05th MARCH, 2019.**

P.C.

1. The appellants herein have challenged the Order dated 3rd October, 2017 whereby the learned Judge, City Civil Court, Gr,

Bombay has allowed the Notice of Motion No. 4327 of 2015 and Notice of Motion No. 4328 of 2015 filed by the aforesaid respondents in Civil Suit No. 1252 of 2015 and 1256 of 2015. By the impugned order, the learned Judge has restrained the appellant-defendants from disturbing the plaintiffs and their family members from using the common WC, and water tap connection in respect of the suit premises.

2. Heard Ms. Shukla for the appellant and Shri Mishra for the respondents. Perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

3. The plaintiffs claim that they are in possession of the suit premises, more particularly described in para 1 of the plaint. The plaintiff filed a suit for permanent injunction apprehending that the defendant would forcibly dispossess them from the suit premises. By order passed in Notice of Motion No.4327 of 2015 the defendant has been restrained from dispossessing the plaintiff from the suit property without following due process of law.

4. During the pendency of the suit the plaintiffs filed another Notice of Motion No.4328 OF 2015 alleging that there is no WC in

the suit premises. They claim that they have been using a common WC situated near the suit premises since last more than 40 years. The plaintiffs have raised a grievance that the defendant has attempted to obstruct and prevent them from using the same.

5. The records indicate that the subject matter of the suit is a room in Shivilal Motilal Compound, Belasis Road Garage, Mumbai Central, Mumbai. Admittedly the WC which is referred to in the Notice of Motion does not form part of the said suit premises and is not a subject matter of the suit. Considering that the interim relief is always in aid of the final relief, the trial court could not have granted interim relief beyond the scope of the suit.

6. At this stage, the learned Counsel for the respondent-plaintiffs states that the plaintiffs have already filed Chamber Summons for amendment of the plaint as to incorporate the facts stated in the Notice of Motion. The learned Counsel for the respondents seeks leave to press for the interim relief after disposal of the said chamber summons. In the light of the above statement, it would be just and proper that the notice of motion is decided after the decision in the chamber summons.

7. Hence, the appeal from order is allowed. The impugned order is set aside. The trial Court to decide the Notice of Motion afresh on its own merits after the decision in chamber summons. Till such time ad-interim relief granted by order dated 7th November, 2015 to continue.

(ANUJA PRABHUDESSAI, J.)