

*R.M. AMBERKAR*  
(Private Secretary)

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

**CIVIL APPLICATION NO. 4374 OF 2018**  
**IN**  
**FIRST APPEAL NO. 92 OF 1996**

Moti Dinshaw Irani & Anr.

.. Applicants

Versus

Firoze Aspandiaz Irani (since deceased)  
through his LR's Mrs. Ketty Firoze Irani &  
Ors.

.. Respondents

- .....
- Mr. Anil V. Anturkar, Sr. Advocate a/w Mr. Tanaji Mhatugade & Mr. Sugandh Deshmukh for the Applicants
  - Mr. R.D. Soni i/by Ram & Co for Respondent Nos. 15, 15a, 15b, 1a to 1d
  - Mr. Tanaya Goswami, AGP for the State
- .....

**CORAM : AKIL KURESHI &**  
**S.J. KATHAWALLA, JJ.**

**DATE : OCTOBER 18, 2019.**

**P.C.:**

**1.** This civil application is filed by the applicants i.e appellants of First Appeal No. 92 of 1996. They have prayed for injunction restraining respondent Nos. 2, 3A, 3B, 4A, 4B, 4C, 15, 15A, 15B and 16 from making any application to the Government or Municipal authorities for the purpose of making changes in the Government records and / or property records in respect of the suit property during

pendency of the First Appeal.

**2.** The applicants - appellants have challenged a judgment and decree passed by the learned Civil Judge, Senior Division. Pending such appeal, they had moved an application for injunction. The prayer clause (a) in the said interim application for injunction reads as under:-

"(a) The Hon'ble Court be pleased to issue an Interim Injunction restraining the Respondents - Defendants from alienating or disposing off any of the suit properties or any of the flats or bungalows or other structures constructed on the suit lands or inducting any third parties in any of the suit properties or in any of the flats or bungalows or other structures constructed on the suit lands during the pendency of this Appeal."

A Division Bench of this Court on such application passed an order on 25.6.1996 which reads as under:-

" Heard both the side. Rule and interim relief in terms of prayer clause (a) against nos. 1,2,3, 4 and 12.  
Civil Application is disposed of."

**3.** We may record that the order dated 25.6.1996 records the appearance of learned advocate on behalf of respondent No. 12. On the ground that the respondents had breached the said interim order by executing a development agreement with respect to the suit property, the applicants

herein had moved Contempt Petition No. 95 of 2006. There were five respondents in the said contempt petition. Respondent Nos. 1 to 3 were the original respondents in the First Appeal, respondent No. 4 was the added party in whose favour the development rights were conveyed and respondent No. 5 was the State of Maharashtra, a formal party.

**4.** In such contempt petition, learned single Judge of this Court passed an order on 22.6.2006 which reads as under:-

- "1. Heard. Prima facie case is made out.
2. Rule. Mr. Hushing waives notice for Respondent No. 1. Mr. Deshmukh waives notice for Respondent Nos. 2 and 3. Mr. Soni waives notice for Respondent No. 4 and Mr. Adsule, A.G.P. waives notice for Respondent No. 5.
3. This Contempt Petition be heard along with First Appeal No. 92 of 1996.
4. Petitioners are permitted to delete Respondents 4(A), 4(B) and 5 and prayer clauses (b) and (c), with liberty to the Petitioners to take recourse to such other remedy as may be permissible by law. Amendment be carried out in two weeks."

**5.** The case of the applicants as emerging from the present civil application and further affidavits filed in support thereof is that the respondents herein had in utter disregard of the said interim order passed by the Division

Bench of this Court had executed the development agreement. Respondent No. 15 herein i.e respondent No. 4 of the Contempt Petition had taken certain steps which would completely frustrate the interim order and possibly the rights of the applicants in the appeal. Learned counsel for the applicants submitted that the said developer has amalgamated the suit land with the neighboring plot of land and by utilizing the FSI available on the suit land by way of transfer of such development rights, already constructed four high-rise buildings 'Blocks A to D' and wishes to construct one more high-rise building which is described as 'Block E'. Only recently, the applicants came to know about these developments and therefore, they had raised objections before the authorities against permission for development being granted to respondent No. 15 to carry out such construction.

**6.** On the other hand, learned counsel for respondent No. 15 submitted that said respondent was shown as respondent No. 4 in the Contempt Petition. In such Contempt Petition also, prayer was made for granting injunction against further

development. The applicants deleted respondent No. 4 in the Contempt Petition as well as their interim prayer. In any case, the development agreement was executed in the year 2005 which the applicants were aware about. The present application is filed after much delay. He lastly contended that the interim order passed by this Court on 25.6.1996 was never served on any of the respondents. The development agreement was executed before service of such order and therefore, without the knowledge of such order having been passed.

**7.** We noticed that respondent Nos. 2 to 4 of the First Appeal had filed an affidavit dated 10.3.1996 in Civil Application No. 605 of 1996 opposing the prayers made therein. Thus, these respondents were not only aware about the filing of the civil application filed by the applicants but had also actively participated in such proceedings. The Civil Application was finally disposed of on 25.6.1996 granting interim relief in terms of prayer clause (a). This gives rise to the presumption that all necessary respondents would have been heard by the bench before disposing of the Civil

Application. Further, as noted, in the order dated 25.6.1996, while disposing of the civil application for stay, the Court had recorded the presence of advocates Mr. V.T. Walawalkar and Mr. Y.R. Naik for respondent No. 12. This is significant because respondent No. 12 was the power of attorney holder of respondent Nos. 2 to 4 as stated by them in the said affidavit. Thus, the original respondents of the First Appeal cannot claim ignorance of the order passed by the Division Bench. Consequently, respondent No. 15 herein in whose favour, the development rights have been transferred after the Court passed the interim order, cannot claim full right to develop the property as per the said development agreement ignoring the interim order. Permitting the said respondents to develop the property without any hindrance would be allowing the original respondents of the First Appeal to frustrate the interim order passed by the Court. In so far as the contempt proceedings are concerned, respondent No. 15 herein i.e original respondent No. 4 of the Contempt Petition who was later on deleted, can plead lack of knowledge of the interim order, however, so far as the civil liabilities are concerned, such defence, in our prima facie

opinion would not be available.

**8.** It is true that the applicants have made the application after some delay, however, the applicants have pointed out that the suit land is still open and it was only recently that they came to know about the amalgamation of two plats and and use of TDR of the suit land for construction on the adjoining land which now stands amalgamated.

**9.** We are informed that the plans for construction of 'Block E' at the said site has not yet been passed. Consequently, it was stated by the learned counsel for respondent No. 15 that no third party rights with respect to the proposed construction have been created.

**10.** By way of interim order, respondent No. 15 or any of the rest of the respondents are precluded from disturbing the status quo operating as of today concerning the proposed construction of building 'Block E'. In other words, there shall be no further permission to construct the building 'Block E'. However, this would not prevent respondent No. 15 from

dealing with the buildings which are already constructed.

**11.** Civil Application is accordingly disposed of.

**[ S.J. KATHAWALLA, J. ]**

**[ AKIL KURESHI, J ]**

Ravindra  
M.  
Amberkar

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signed by  
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