

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

**APPEAL FROM ORDER (STAMP) NO.35565 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.35568 OF 2018
IN
APPEAL FROM ORDER (STAMP) NO.35565 OF 2018**

Jaikishin P. Vaswani ...Appellant

Versus

Mr. Ashok Ambani and Ors. ...Respondents

....

Mr. Siddhesh Bhole with Mr. Abdulla Cutlariwalla i/b. M/s Haresh Jagtiani and Associates for the Appellant/Applicant.

Mr. Bhavin Gada with Ms Sneha Patil and Ms Hema Chhabra i/b. M/s. Maniar Srivastava Associates for the Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th FEBRUARY, 2019.

P.C.:-

Heard the learned counsel for the Appellant and the learned counsel for the Respondent No.2.

2. The Appellant herein has challenged the order dated 22.11.2018 whereby the learned Judge of City Civil Court has dismissed the Notice of Motion No.2052 of 2017 filed in Suit No. 4145 of 2010.

3. A perusal of the impugned order indicates that the notice of motion has been dismissed mainly in view of dismissal of earlier notice

of motion No.2046 of 2010. The learned Judge has not given any findings on any of the three prerequisites of injunction i.e. existence of a prima facie case, balance of convenience and irreparable loss.

4. The learned counsel for the respective parties concede that the impugned order cannot be sustained. Hence, the following order:-

- (i) Impugned order is set aside.
- (ii) Matter is remitted to the City Civil Court, Mumbai with directions to decide the matter afresh after hearing the respective parties.
- (iii) The parties to maintain status-quo in respect of subject flat till the disposal of the notice of motion.
- (iv) This Court has not gone into the merits of the case and all points and contentions of the respective parties are kept open.
- (v) Parties are directed to appear before the City Civil Court on 18.2.2019.
- (vi) The notice of motion shall be decided on its own merits within a period of three weeks from the date of appearance of the parties without being influenced by order dated 22nd November, 2018 as well as the

status-quo order passed by this Court.

5. The Appeal as well as the Civil Application stand disposed of in above terms.
6. All concerned to act on an authenticated copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)