

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 142 OF 2021****WITH****I.A. NO. 1565 OF 2021****IN****APPEAL FROM ORDER NO. 142 OF 2021**

Sanjar Enclave Premises CHS Ltd. & Ors.

.....Appellants/
Applicants.

Vs.

Siraj Mohammed Haji Adam & Ors.

.....Respondents.

Mr. Ranjit Thorat, Senior Advocate a/w Ms. Sukeshi Bhandari and Mr. Akshay Chauhan for the Appellants/Applicants.

Mr. Prasad Dhakephalkar, Senior Advocate i/by Mr. Sanjeev Singh a/w Mr. Ritesh Singh for the Respondent Nos. 1 to 5.

Smt. Madhuri More for the Respondent No.6-BMC.

CORAM : A. S. GADKARI, J.

DATE : 28th JULY, 2021.

(Through Video Conferencing)

PC:-

Heard Mr. Thorat, learned Senior Counsel for the Appellants/Applicants, Mr. Dhakephalkar, learned Senior Counsel for the Respondent Nos.1 to 5 and Smt. More, learned counsel for the Respondent No.6-BMC.

2 The Appellants have impugned Order dated 16th June, 2021 passed in Notice of Motion No.794 of 2021 in L.C. Suit No.1570 of 2020,

thereby partly allowing the said Notice of Motion filed by it for interim reliefs. Paragraph No.2 of the operative part of the said impugned Order dated 16th June, 2021 reads as under-

“2) *Accordingly, temporary injunction is granted and thereby defendant Nos. 1 to 5 are temporarily restrained from making any further sort of construction of the suit building touching to the ‘Sanjar Enclave’ without permission of the Plaintiffs, till decision of the suit.”*

Perusal of impugned Order and its operative part as quoted hereinabove indicates that, the interest of the Appellants have been adequately protected by the Trial Court.

3 Mr. Dhakephalkar, learned Senior counsel appearing for the Respondent Nos.1 to 5, on instructions, makes a further statement that, the Respondent Nos.1 to 5 will not carry out any horizontal construction directly or indirectly touching the Appellants’ Society.

The Said statement is accepted.

4 Mr. Thorat, learned Senior counsel submitted that, though in the Notice of Motion the Appellants did not pray for demolition of the said podium/connecting bridge of two buildings, his clients intend to file an Application for amendment of the plaint before the Trial Court.

He drew my attention to the page Nos. 47 to 50 of the Interim Application No.1565 of 2021, pointing out, the said podium/connecting

bridge of two buildings constructed by the Respondents. It is to be noted here that, the Appellants are at liberty to amend the plaint by following the necessary procedure as contemplated under the provisions of Code of Civil Procedure.

5 In view of the relief granted by the Trial Court and further statement made by Mr. Dhakephalkar, learned Senior Counsel, nothing further survives in the present Appeal from Order and is accordingly disposed off.

Taking into consideration the limited controversy involved in the present Suit, the learned Judge, City Civil Court, Borivali Division, Dindoshi Goregaon, Mumbai is requested to expedite the hearing of the said L.C. Suit No.1570 of 2020.

6 In view of disposal of the Appeal from Order itself, Interim Application No.1565 of 2021 does not survive and is also disposed off.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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SANJIV
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Date: 2021.07.30
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