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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6219 OF 2018**

Shri Yashwant Baliram Bhoir and Anr.

....Petitioners

V/s

Smt. Jijabai Rajaram Bhoir and Ors.

.....Respondents

Mr. Anant Vadgaonkar a/w Mr. Chandrashekhar Patil I/B Mr. A.S. Rao
for the Petitioners in both the Writ Petitions.

None for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 18, 2021

P.C.:-

1] None for the Respondents, though served.

2] In a suit for declaration and injunction being RCS No.616 of 2016 pending on the file of Civil Judge, Junior Division, Kalyan, Trial Court rejected the prayer for grant of temporary injunction vide order dated 25/1/2017, whereas the said prayer came to be allowed by the District Judge in Misc. Civil Appeal No.25 of 2017. As such this Petition.

3] Submissions are, trial in the suit is yet to commence, as issues are not yet framed. It is further claimed that impugned order dated 18/8/2017 is passed without going into merits of the matter and without making any specific observations on the issue of violation of any Building Bye-laws or Development Control Rules.

4] With the assistance of learned Counsel for the Petitioners, I have perused the order which is impugned in the present Petition.

5] While reconsidering findings, lower Appellate Court, to the extent of directing maintaining of open margin of 15 feet, has not dealt with merits of matter, particularly claim of the Respondents/Plaintiff on the issue of prima facie case, irreparable loss and balance of convenience. Appellate Court in vague manner, proceeded to pass an order of injunction that too without noticing contravention of any provisions of law or Rules. That being so, in my opinion, the order impugned dated 18th August, 2017 is not sustainable and as such, same is quashed and set aside. The Appellate Court is directed to decide the said Misc. Civil Appeal No.25 of 2017 afresh having regard to the fact that the trial in the suit is yet to

commence.

6] Status quo as of today to continue till decision of appeal. Needless to clarify that appeal be decided expeditiously and in any case within a period of 12 weeks from the date of production of this order.

(NITIN W. SAMBRE, J.)