

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.847 OF 2022
IN
APPEAL FROM ORDER ST NO.2949 OF 2022**

Nandu Antaram Rajput & Anr .. Applicants

Versus

Smt.Muktabai Ramchandra Kute & .. Respondents
ors

...

Mr. Abhijit Kulkarni i/b Viraj Hake for the applicants.
Mr.Bharat Gadhavi with Vishal Navale and Vikrant Khare i/b
Tejesh Dande & Associates for respondent nos.2 to 5.

CORAM: BHARATI DANGRE, J.

DATED : 7th APRIL, 2022

P.C:-

1 On notice being served to the respondent nos.2 to 5,
the learned counsel has put appearance.

2 By the present application, the delay of 291 days in
filing the AO is sought to be condoned.

Heard learned counsel for the applicant and perused
the application.

3 The Application in paragraph nos.3 to 8 set out the reasons for the delay and the same being procedural and bonafide, I am inclined to condone the same. As a consequence, Interim Application is allowed.

AO St No.2949/2022

4 Heard learned counsel for the appellant and learned counsel for the respondent nos.2 to 5(original plaintiffs) who are the contesting respondents. Learned counsel raise an objection about the maintainability of the said proceedings, in the wake of the fact that the impugned order dated 5/3/2019 is an interlocutory order passed below Exhibit-144.

5 The impugned order came to be passed on an application below Exhibit-144 which prayed for maintaining status quo of suit property and the relief was prayed to the effect that the defendants and/or parties to the suit be directed to not create third party interest.

 This application came to be allowed on 5/3/2019 and being aggrieved, the present Appeal is filed.

6 Apparently, the impugned order came to be passed on Exhibit-144, which is not an application for grant of injunction, but it merely is in form of an application to maintain status quo of suit property and in the prayer clause, it seek restraint order against the defendants from creating any third party interest.

The learned Judge has granted the said application by directing to maintain the position of the suit property as on date and restraining the defendants mentioned in the order as well as the proposed defendants from creating any third party interest till next date.

7 Learned counsel for the appellant state that this order is continued from time to time and at least on 24 occasions, the matter is adjourned.

8 If the plaintiff desire to seek injunction in his Suit, it is incumbent upon him to move an appropriate application for injunction under Order 39 Rule 1 and 2 of CPC and merely by preferring a perfunctory application, directing status quo ought not have to be entertained by the learned Judge, since the impugned order, even do not disclose any reasons as to why this interim protection is granted in favour of the plaintiffs and against the defendants.

In such a case, subject to the plaintiffs taking out appropriate application for injunction under Order 39 Rule 1 and 2 within a period of two weeks from today, the learned Judge shall proceed with the said application. The order passed under the impugned order dated 5/3/2019 shall remain in force till the application for injunction is duly filed by the plaintiff.

Upon the application being taken out, the learned Judge shall decide the same by taking into account the parameters

settled for grant of injunction and the order passed below Exhibit-144 shall then stand extinguished.

In the wake of the aforesaid order being passed, the AO is disposed off.

(SMT. BHARATI DANGRE, J.)