

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

WRIT PETITION NO.3941 OF 2022

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Shri Yuvraj V. Salunkhe and Anr.

..... Petitioners

Vs.

Tatyaso T. Koli and Anr.

....Respondents

Mr. Vijay Killedar for the Petitioners.

Mr. Bhimrao Powar with A.K.Moily for the Respondent Nos.1(a) to 1(d).

Mr. Akshay Shinde for Respondent No.2.

CORAM: SANDEEP K. SHINDE, J.

DATED : SEPTEMBER 13, 2022

P.C.

1. In Miscellaneous Civil Appeal No.1 of 2022, the learned District Judge, Ichalkaranji vide order dated 23rd March, 2022 restrained the Defendant Nos.1 and 2-Petitioners herein from making further construction till disposal of the suit. Legality and correctness of that order is questioned in this Writ Petition. It is plaintiff's case, that the defendants commenced construction on adjoining plot, without leaving side margin, which caused and resulted into encroachment on his land/property. Therefore, in essence, plaintiff case is, construction of the building was in breach of, plan sanctioned and building permission granted by the Planning Authority. It appears, Municipal Council/Planning Authority, submitted its say in Regular Civil Appeal stating, that

upon inspection of suit site, construction of the building was found as per the sanctioned plan. Yet, the learned appellate Court has not considered the say of the Municipal Council.

2. Be that as it may, Petitioners have filed an Undertaking, in this Court, that they shall not to construct balcony (external extension of upper floors) or Chhajja (sloping or horizontal structural overhang) as defined in terms of the provisions of 1.3.26 of the Unified Development Control and Promotion Regulations for Maharashtra, in the portion of the building, facing the plot owned by respondent no.1-Original Plaintiff. AND that they shall carry out construction strictly in accordance with building permission, which has been granted by the Municipal Council.

3. In my view, Undertaking of the Petitioners to this Court, and the reply filed by the Municipal Council before the Appellate Court in Civil Appeal No.1 of 2022, indeed protects rights of the plaintiff in his property.

4. In consideration of the facts aforesaid, petition is allowed. In the consequence, the impugned order restraining the

Petitioners from making any further construction till the disposal of the suit, is set aside.

5. However, it is made clear that Suit Construction and defendants' rights therein, shall be subject to decree in the Regular Civil Suit No.330 of 2021 instituted by the plaintiff in the Court of Civil Judge, Senior Division, Ichalkaranji.

6. Needless, to state that Trial Court shall decide the suit independently on its' own merits without being influenced by the order of this Court.

7. Writ Petition is allowed in the aforesaid terms and disposed of.

(SANDEEP K. SHINDE J.)