

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.119 OF 2022
WITH
INTERIM APPLICATION NO.672 OF 2022
IN
APPEAL FROM ORDER NO.119 OF 2022

M/s.Nandanvan Co. Op. Hsg. So. Ltd.

Thr. Its Chairman/Treasurer

...Appellant

Vs.

M/s.Vishal Construction & Ors.

... Respondents

NILAM
SANTOSH
KAMBLE

Digitally signed
by NILAM
SANTOSH
KAMBLE
Date: 2022.07.28
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Mr.Manoj Kumar Upadhyay for the Appellant.

Dr.Uday Warunjikar a/w Mr.V.P. Shastri i/b Mr.D.B. Singh for
Respondent No.1.

Mr.Sarosh Bharucha a/w Mr.Satyadev D. Joshi for Respondent
No.2.

CORAM : C.V. BHADANG, J.

DATE : 27 JULY 2022

P.C.

. The challenge in this Appeal is to the order dated 24
November 2021 passed by the learned City Civil Court at
Dindoshi in Draft Notice of Motion in Suit No.2193 of 2022 by
which ad-interim injunction restraining the Respondent-
Defendant from carrying out the construction has been refused.

2. I have heard the learned counsel for the parties.

3. It is submitted by the learned counsel for the Appellant that the construction is illegal as the consent of the flat/tenement owners who are members of the Appellant-Society has not been obtained before effecting the construction. It is submitted that the Respondents have also consumed the FSI and TDR which was otherwise available to the Appellant-Society and the construction has blocked one of the two approach roads available to the members of the society. The learned counsel pointed out that on account of the construction of a ramp, the second access has been closed and it is not available.

4. Mr.Warunjkar, the learned counsel for the Respondent submitted that the Notice of Motion is still pending before the City Civil Court in which reply is filed. The learned counsel submitted that one of the access is available to the members of the Appellant.

5. I have considered the submissions made. The record discloses that the ad-interim relief has been refused in November 2021 and there is no interim relief operating in this Appeal since then. The reply is stated to be filed in the Notice of Motion and thus it would be appropriate if the hearing and disposal of the Notice of Motion is expedited. Where the parties can raise all contentions available to them both in law and on facts.

6. In that view of the matter the Appeal is disposed of.
7. The City Civil Court shall hear and decide the Notice of Motion as expeditiously as possible and preferably within a period of eight weeks from the receipt hereof.
8. The parties to co-operate for the time bound disposal of the Notice of Motion.
9. The rival contentions of the parties are kept open. There shall be no order as to costs.
10. Pending Interim Application is disposed of.

C.V. BHADANG, J.