

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.18 OF 2016
WITH
INTERIM APPLICATION NO.17915 OF 2023
IN
APPEAL FROM ORDER NO.18 OF 2016
WITH
CIVIL APPLICATION NO.715 OF 2016
IN
APPEAL FROM ORDER NO.18 OF 2016
WITH
CIVIL APPLICATION NO.28 OF 2016
IN
APPEAL FROM ORDER NO.18 OF 2016

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Johnson Fransis D'souza	Appellant/Applicant
V/S	
Paul Alex Dabre & Ors.	Respondents

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Mr. Drupad S. Patil for the Appellant/Applicant.
Mr. Anil D'souza for the Respondents.

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CORAM: SANDEEP V. MARNE, J.
DATE : DECEMBER 18, 2023.

P.C.:

1 The challenge in the Appeal is to the order dated 9 December 2015 passed by the Joint Civil Judge Senior Division, Vasai, rejecting the Appellant/Plaintiff's application at Exhibit 5 for grant of temporary injunction.

2 The Appellant/Plaintiff had instituted a Special Civil Suit No.94 of 2015 for specific performance of agreement to sell in his favour. He sought temporary injunction to restrain the Defendants from creating third party rights in the suit property and/or from causing any construction at the suit property during pendency of the suit. The temporary injunction has been refused by the Trial Court by order dated 9 December 2015. It has been now more than eight years that the Appellant/Plaintiff is without any interim injunction so far as creation of third party rights is concerned. So far as construction on the suit property is concerned, it appears that on 20 June 2016 this Court had restrained the Respondents from carrying out any construction till the next date of hearing. The said protection was however not continued when the Appeal came up for hearing on 16 April 2019 and on various dates thereafter when it was listed. Be that as it may. Both the learned Counsel are on *ad idem* that no construction is underway on the suit property at this point of time.

3 In that view of the matter, the Appeal can be disposed of by requesting the Trial Court to take up the suit for hearing which is pending since the year 2015. As of now there is no any danger of any construction being carried out at the suit property. In the event any occasion arises where the Appellant/Plaintiff notices any construction activity at the suit site, the Appellant/Plaintiff would be at liberty to take out an application before the Trial Court to seek appropriate relief in that regard and such application will be decided by the Trial Court strictly on

its own merits without being influenced by any of the orders passed in the present Appeal.

4 The Appeal is accordingly disposed of by requesting the Trial Court to expedite the hearing of the Special Civil Suit No.94 of 2015 and to make an endeavour to decide the same expeditiously as possible, preferably within a period of one year from today.

5 In view of the disposal of the Appeal from Order, the Interim Applications and the Civil Application do not survive and the same are accordingly disposed of.

(SANDEEP V. MARNE, J.)