

Prajakta Vartak

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

APPEAL FROM ORDER NO. 821 OF 2011

IN

SPECIAL CIVIL SUIT NO. 437 OF 2010

WITH

CIVIL APPLICATION (stamp) NO. 12132 OF 2012

WITH

CIVIL APPLICATION NO.643 OF 2012

Murtimant Balkrishna Tandel & Anr.

..Appellants

Vs.

Smt. Snehnazbegum Aziz Ahmed Khan & Ors.

...Respondents

Mr. Brijesh Upadhyay i/b. Mr. Vaibhav Shah and Ms. Chaitali Tandel for
Appellants.

CORAM : G.S. KULKARNI, J.

DATE : JANUARY 11, 2023

P.C.:

1. Heard Mr. Upadhyay, learned counsel for the appellants. None for the respondents.
2. This appeal is directed against an order dated 26 April, 2011 passed by the 3rd Jt. Civil Judge, S.D., Kalyan, whereby an application for grant of temporary injunction below Exhibit 39 as filed by defendant no.1/respondent no.1 in the counter claim has been allowed in the following terms:-

“ **ORDER**

1] Application at Exh.39 is allowed.

2] The plaintiffs are hereby temporarily restrained from causing obstruction in the possession of defendant No.1 over the suit shop till the disposal of counter claim.

3] Cost of this application would be cost in the cause.”

3. This appeal was filed on 13 May, 2011. There is no interim protection granted in favour of the appellants of any stay to the impugned order. In the meantime, it is fairly stated by the learned counsel for the appellants that the suit has progressed and the suit is at the stage of evidence.

4. In this view of the matter, in my opinion, it is appropriate that the suit itself is decided by the trial Judge as expeditiously as possible. The impugned order has continued almost for a period of 11 years. No useful purpose would be achieved by adjudicating all the rival contentions at this stage of the proceedings. Thus, the appeal is disposed of by the following order:-

ORDER

i. The learned 3rd Jt. Civil Judge, Senior Division, Kalyan is directed to adjudicate the suit and the counter claim in the suit as expeditiously as possible and by the end of December, 2023.

ii. Parties are directed to co-operate in the early disposal of the suit.

- iii. No unwarranted adjournments shall be entertained by the learned trial Judge.
- iv. All contentions of the parties in the pending suit and the counter-claim are expressly kept open.
- v. Needless to observe that the impugned order is passed on the basis of prima-facie findings and the suit be decided on its own merits.
- vi. It is, however, clarified that if there is change in the circumstances, it is open for the appellants to file an appropriate application and seek appropriate orders in that regard from the trial Court.
- vii. No costs.
- viii. Civil Application (stamp) No. 12132 of 2012 and Civil Application No.643 of 2012 would not survive. The same are disposed of accordingly.

[G.S. KULKARNI, J.]