

Sayali Upasani

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

**APPEAL FROM ORDER NO.743 OF 2022
WITH
INTERIM APPLICATION. NO. 16658 OF 2022**

Rajnath Adyanprasad Pande	...Appellant/ Org. Defendant No. 1.
Vs.	
Ashok Kumar Sabhanath Pandey and Ors	...Respondents

Mr. Rohan Sawant a/w Mr. Kewin P. a/w Mr. Ashwin S. i/b
Hassan Khan, for Appellant.

Mr. Ashutosh R. Gole, for Respondent Nos. 1 to 4. s

CORAM:- N. J. JAMADAR, J.

DATED:- 15th MARCH, 2023

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) The challenge in this Appeal is to an order dated 9th April, 2021, passed by the learned Civil Judge Senior Division, Vasai, on an application for grant of temporary injunction in Special Suit No. 21 of 2018, whereby the defendant No.1- appellant and

defendant No. 2 were restrained from creating third party interest in the suit property and from causing obstruction to plaintiffs' possession over suit property.

3) Mr. Savant, the learned Counsel for the appellant-defendant No. 1 submits that the Trial Court has not considered and, according to his instructions, decided three applications, namely, an Application preferred by the plaintiffs for permission to file documents dated 22nd August, 2019, application preferred by the defendant No. 2 for appointment of the Court Commissioner and application preferred by the defendant No. 1 for producing documents dated 27th September, 2019 .

4) According to Mr. Sawant, a decision on those applications would have had a bearing on the determination of the application for temporary injunction.

5) Having regard to the nature of the dispute and the view recorded by the Trial Court, I do not find any case is made out for interference with the impugned order, at this stage.

6) It would be, however, appropriate to direct the Trial Court to decide aforesaid applications in accordance with law and, post the outcome of those applications, grant liberty to the appellant–

defendant No. 1 to file an application under Order 39 Rule 4 of the Code of Civil Procedure, 1908.

7) In the event, such an application is made, it shall be decided on its own merits and in accordance with law. This Court may not be construed to have expressed any opinion on the said aspect.

8) With the aforesaid clarification, the Appeal stands disposed.

9) In view of disposal of the Appeal, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]