

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.831 OF 2018
WITH
CIVIL APPLICATION NO.1076 OF 2018
IN
APPEAL FROM ORDER NO.831 OF 2018

M/s. Gupta and AssociatesAppellant/Applicant
V/S

Hero Notandas Motwani & Anr.Respondents

...

Mr. S.S. Patwardhan i/b Ms. Mrinal A. Shelar for the Appellant/Applicant.
Mr. Shridhar A. Patil for Respondent No.2-PCMC.

...

CORAM: SANDEEP V. MARNE, J.

DATE : OCTOBER 04, 2023.

P.C.:

1 By this Appeal, the Appellant challenges order dated 20 February 2018 passed by VIth Joint Civil Judge Senior Division, Pune, rejecting the Appellant/Plaintiff's application for grant of temporary injunction.

2 The Appellant/Plaintiff has filed Special Civil Suit No.263 of 2017 against Respondent No.1/Defendant No.1 as also against the Respondent No.2-Municipal Corporation. In that suit the grouse of the Appellant/Plaintiff is that Defendant No.1 has committed encroachment on Appellant/Plaintiff's portion of land. Therefore, direction is sought for removal of the encroachment in the suit. Since there is an allegation of encroachment on Appellant/Plaintiff's property, Appellant/Plaintiff has

set up a challenge to the commencement certificate dated 12 January 2016 issued by the Municipal Corporation.

3 The Appellant/Plaintiff has also prayed for compensation of amount of Rs.1 crore from Defendant No.1 possibly for committing encroachment on his land. In that suit Appellant/Plaintiff filed application for temporary injunction to restrain Defendant No.1 from obstructing possession of the Plaintiff, from alienating or creating third party interest in the suit property and also to restrain the Municipal Corporation from granting any permission for construction on the suit property. It appears that by the time suit was filed the commencement certificate was already issued on 12 January 2016 and to that extent relief of temporary injunction to restrain the Municipal Corporation, issuing development permission had already become infructuous. The Trial Court has rejected the application for grant of temporary injunction by order dated 20 February 2018.

4 Mr. Patwardhan, the learned Counsel appearing for the Appellant/Plaintiff would fairly submit that by the time the impugned order was passed the construction had already progressed upto 4th floor. Though the present Appeal challenges the order dated 20 February 2018, it appears that the same has not been moved for a considerable period of time. It had twice come up before this Court on 9 April 2019 and 6 December 2019 when the same was adjourned at the request of the learned Counsel appearing for the Appellant.

5 By now the construction of the building must have already been completed as period of five long years has elapsed from the date of refusal of interim injunction. In that view of the matter, no purpose would be served in determining the correctness of the order dated 20 February 2018 at this distance point of time.

6 Mr. Patwardhan would urge that the Trial Court had not been proceeding ahead with the Plaintiff's suit. He would pray for expediting the hearing of the suit.

7 Accordingly, Appeal is disposed of without disturbing the order dated 20 February 2018. The Trial Court is requested to expedite the hearing of the suit.

8 In view of disposal of the Appeal, the Civil Application also stands disposed of accordingly.

(SANDEEP V. MARNE, J.)