

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 1170 OF 2022
IN
SPECIAL CIVIL SUIT NO. 48 OF 2020
WITH
INTERIM APPLICATION (ST.) NO. 3163 OF 2023
WITH
INTERIM APPLICATION NO. 30535 OF 2022
WITH
INTERIM APPLICATION NO. 30534 OF 2022**

M/s. Siddhi Real Estate Developers	.Appellant/Or.Defendant No.1
Vs.	
Shri. Vinod Dhanaji Bhoir & Ors.	.Respondents/Org. Plaintiffs & Defendant Nos.2 to 73

**AND
APPEAL FROM ORDER (STAMP) NO. 4491 OF 2023
IN
SPECIAL CIVIL SUIT NO. 48 OF 2022
WITH
INTERIM APPLICATION (ST.) NO. 4492 OF 2023
WITH
INTERIM APPLICATION (ST.) NO. 4493 OF 2023
(Not on board. Taken on board.)**

Shri. Vinod Dhanaji Bhoir & Ors.	.Appellants/Org.Plaintiffs
Vs.	
M/s. Siddhi Real Estate Developers & Ors.	.Respondents/Org.Defendants

Mr. Pravin Samdani, Senior Advocate with Mr. Karl Tamboly, Mr. Hrushi Narvekar, Mr. Parag Kabodi and Mr. Abhishek Kothari i/b. DSK Legal for Appellant in AO No.1170/22.

Mr. Surel Shah with Mr. Rohit Joshi for Respondent Nos.1 to 6 and for Appellant in AOST No.4491/23.

Mr. Vishesh Shrivastav with Ms. Anushree Koparkar i/b. Ms. Dipali

Mainkar for Respondent No.7.

Ms. Chaitrali Deshmukh with Ms. Leena Patil for Respondent No.78.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 23, 2023

P.C.:

1. These appeals arise from an order dated 19 October, 2022 passed by the 3rd Joint Civil Judge, Senior Division, Thane whereby an application filed by respondent no.1 to 6/original plaintiffs below Exhibit 5 has been partly allowed in terms of the following order:-

“ ORDER

1. The application is partly allowed.
2. Defendant Nos. 1 and 2 are hereby restrained from creating third party interest by any way only in respect of suit properties, till final disposal of the suit.”

2. I have heard Mr. Samdani, learned senior counsel for the appellants and Mr. Surel Shah, learned counsel for respondent nos.1 to 6/original plaintiffs.

3. From the arguments as advanced before the Court, it appears that there are certain documents being relied upon by the appellants which were not before the learned trial Judge when the application (Exhibit 5) was decided. It appears that there was no independent reply of the

appellants filed to the Exhibit 5 application, and what was filed, was the written statement. Mr. Samdhani, learned Senior Counsel for the appellants informs that in fact applications for amendment to the written statement (Exhibit 70/D to Exhibit 73/D) have already been filed by the appellants before the learned trial Judge.

4. Thus, the appellants have asserted their case to challenge the impugned order on such material/documents which were not before the trial Court in the adjudication of Exhibit 5 application leading to the impugned order.

5. In the above circumstances, a suggestion was made to the parties to which Mr. Samdani as also Mr. Surel Shah are fairly agreeable that the parties be heard afresh on the Exhibit 5 application. For such course of action to be adopted, it is also agreed between the parties that the impugned order passed by the learned Trial Judge on the Exhibit 5 application, be set aside. The parties further agree that till the Exhibit 5 application is adjudicated afresh and appropriate orders are passed, paragraph 2 of the operative part of the impugned order shall continue to operate for a period of one month from today.

6. In such view of the matter, further adjudication of these appeals is

not called for. Both the appeals stand disposed of in terms of the following order:-

ORDER

- i. The impugned order dated 19 October, 2022 is set aside.
 - ii. Paragraph 2 of the operative part of the impugned order shall remain in operation for a period of one month from today.
 - iii. The appellants/defendants in the suit are permitted to file their respective replies to the Exhibit 5 application filed by the plaintiffs which shall be filed within one week from today, relying upon all the necessary documents.
 - iv. The plaintiffs are permitted to file their rejoinder affidavits within a period of one week of the reply affidavits being filed / served on the plaintiffs.
 - v. After the pleadings on Exhibit 5 application in the manner as noted above are completed, considering the urgency of the proceedings, the learned trial Judge shall hear the parties and disposed of Exhibit 5 application within a period of 15 days thereafter.
7. Mr. Shah has fairly stated that his clients would not have any objection for the applications for amendment to the written statement as filed by the appellants/defendant nos.1 to 6 (Exhibit 70/D to Exhibit 73/

D) being allowed.

8. Needless to observe that the plaintiffs are also at liberty to make an appropriate application for amendment of the plaint, if so necessary.

9. All contentions of the parties are expressly kept open.

10. Disposed of in the above terms. No costs.

11. Interim applications would not survive. The same are disposed of accordingly.

12. Parties to act on an authenticated copy of this order.

[G.S. KULKARNI, J.]

corrected as per speaking to minutes order dated 24/02/2023.