

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

**APPEAL FROM ORDER NO. 43 OF 2023
WITH
INTERIM APPLICATION NO.432 OF 2023**

M/s. Jai Builders and Developers
Thr. Part. Jaykumar Prakashbhai Patel
Versus
Rita Paresh Dedhia & Ors.

...Appellant

... Respondents

...

Mr. Narendra V Walawalkar, Sr. Advocate a/w. Mr. Suresh Sabrad,
Jeetenndra Sachhadev, Mr. Abubakar Patel i/b. JS LEGAL for Petitioner.
Mr. G. S. Godbole, Sr. Advocate i/b. Mr. Drupa Patil for Respondent
No.1.

...

**CORAM: SANDEEP V. MARNE, J.
DATE : 29 SEPTEMBER 2023.**

P. C.:

When the Appeal from Order came up for hearing before this court on 22 February 2023, the same was disposed of by passing the following order:

“1. Heard Mr. Walawalkar, learned Senior Counsel appearing for the appellants and Mr. Godbole, learned Senior counsel appearing for Respondent No.1-original plaintiff. The other respondents are not the contesting respondents, hence, there ought not to be any impediment in passing orders on the present proceedings.

2. The order impugned in this appeal is an order dated 1 December 2022 passed by the learned Civil Judge, Senior Division, Panvel, on an application filed by respondent No.1-plaintiff below

Exhibit 105. The operative part of the impugned order is required to be noted which reads thus:

ORDER

01. Application Exh. 105 is hereby allowed.

02. The defendant Nos.08 to 10 are hereby temporarily restrained from amalgamating plot No.37/C in the suit plot bearing No.37, Sector 12, admeasuring 1375 sq.mtrs, situated at Kamothe, on demand of defendant No.11, till final decision of the suit.

03. Order in open Court."

3. Mr. Walawalkar appearing for the appellant has submitted that the temporary injunction application below 'Exhibit 5', as filed by respondent No.1-plaintiff is pending adjudication. However, during the pendency of the said application, application below 'Exhibit 105' as filed by respondent No.1/plaintiff came to be adjudicated, on which the impugned order has been passed, thereby allowing the said application. It is Mr. Walawalkar's submission that the observations made in the impugned order are prejudicial to the interest of the appellant and which ought not to weigh with the learned trial Judge in the adjudication of the temporary injunction application filed below 'Exhibit 5'. He submits that even if the said observations as made in the impugned order are prima facie, nonetheless, the learned Trial Judge is required to adjudicate exhibit 5 application independently without being influenced by the observations as made in the impugned order.

4. Mr. Godbole has fairly stated that such course of action as suggested by the appellants to the effect that the 'Exhibit 5' application be decided independently without being influenced by the observations made in the impugned order is certainly an acceptable course of action.

5. In view of the fair stand taken by the parties, further adjudication of the present proceedings is not called for. The appeal is accordingly disposed of by the following order:

ORDER

(I) The application filed by respondent No.1 -plaintiff below 'Exhibit 5' praying for temporary injunction be decided by the learned Trial Judge on its own merits without being influenced by the impugned order passed on respondent No.1's/plaintiff's application below Exhibit 105.

(II) In the event, in future, there arises any cause requiring the appellants to pursue their challenge in relation to the impugned order, liberty to the appellants to revive the present appeal by filing an interim application. On such revival, necessarily all contentions of the parties including that of respondent No.1 / plaintiff as also of the appellants are expressly kept open.

(III) Learned Trial Judge shall decide the 'Exhibit 5' application as expeditiously as possible, and as the application is of the year 2016, within a period two months from today. The parties shall co-operate in the early disposal of such application.

6. Appeal is accordingly disposed of.

7. As the appeal itself is disposed of, pending Interim Application would not survive, it stands disposed of.

8. No costs.”

2. It appears that before passing of order dated 22 February 2023, the plaintiff had filed application for amendment of plan on 06 January 2024 for impleadment of Panvel Municipal Corporation essentially on the ground that the powers of planning authority were transferred from CIDCO to Panvel Municipal Corporation.

3. As per order dated 22 February 2023 passed by this Court, the application for grant of temporary injunction at Exhibit 5 was supposed to be decided within a period of two weeks from the date of

order. However, after passing of order dated 22 February 2023 Plaintiff's application for amendment came to be allowed on 24 March 2023 and Panvel Municipal Corporation was added as party defendant to the suit. On account of change in circumstances where Panvel Municipal Corporation, in capacity as Planning Authority, came to be added to the suit on 24 March 2023, the plaintiff decided to withdraw the application at Exhibit 5 on 06 April 2023 and filed a separate application on the same day for grant of temporary injunction against original as well as newly added defendants. It appears that on account of filing of fresh application for grant of temporary injunction at Exhibit 137, Plaintiff has withdrawn the earlier application at Exhibit 5.

4. This conduct on the part of Plaintiff made the Appellant to file an Application before this Court for restoration of the present Appeal from Order. Accordingly Interim Application No.4068 of 2023 filed by the Appellant came to be allowed on 22 June 2023 and the present Appeal from Order has been restored to file.

5. Mr. Walawalkar, the learned senior advocate appearing for Appellant would contend that on account of conduct of the Plaintiff in not getting the earlier application at Exhibit 5 for grant of temporary injunction decided, the impugned order dated 01 December 2022 passed on Application at Exhibit 105 restraining CIDCO from amalgamating

plot number 37/C into plot number 37 has been operating indefinitely. He would submit that while passing the impugned order dated 01 December 2022, the Trial Court had not considered the point whether Plaintiff has made out any *prima facie* case for grant of any interim prohibitory orders. That the order dated 01 December 2022 is passed only on apprehension of creation of complications in respect of suit property. He would submit that without the Trial Court arriving at a conclusion that Plaintiff has made out a *prime facie* case in respect of cause of action involved in the suit, the Trial Court's order dated 01 December 2022 has been continuing indefinitely, that too in respect of neighboring property, which does not even form part of the suit property.

This Court by its order dated 22 February 2023 had directed that the Plaintiff's application for temporary injunction at Exhibit 5 shall be decided by the Trial Court without being influenced by the impugned order dated 01 December 2022. To my mind, the same directions can again be given, even in changed circumstances. The only change that has occurred now is that application at Exhibit 5 now stands substituted by application at Exhibit 137. Instead of seeking injunction only against original defendants, Plaintiff is now seeking temporary injunction against Panvel Municipal Corporation as well.

6. Accordingly, I proceed to pass the following order-

- i) The application for grant of temporary injunction filed by the Plaintiff at Exhibit 137 shall be decided by the Trial

Court on its own merits, without being influenced by the order dated 01 December 2022.

ii) Till the application at Exhibit 137 is decided, the order dated 01 December 2022 shall continue to operate only as a pro tem arrangement.

iii) The Trial Court shall proceed to decide application at Exhibit 137 as expeditiously as possible, preferably within two months from today. Parties to cooperate with the Trial Court for early decision of that application.

iv) In the event the trial Court proceeds to reject the application at exhibit 137, the pro tem arrangement made by the Trial Court in the form of order on application at Exhibit 105 dated 01 December 2022 shall automatically come to an end.

v) All the contentions of the parties are kept open.

7. With the above directions appeal is disposed of.

8. Since the appeal is disposed of nothing survives in the Interim Application and the same is also disposed of.

SANDEEP V. MARNE, J.