

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 1176 OF 2022
with
INTERIM APPLICATION NO.30696 OF 2022**

Rabiabanu Mohammed Trust & Ors. ..Appellants
Vs.
Shri.Santosh Gopal Keluskar, Prop. Of S.K.Developers
and M/s.Opulence Developers & Ors. ...Respondents

Dr.Vivek G. Bhartu with Mr.Shahzad M. Panday with Mr.M. H. Ansari, for
the Appellants/orig.plaintiffs.

Ms.Smita Tondwalkar, for Respondent - BMC.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 1, 2023

P.C.:

1. Not on board. Upon mentioning taken on board on a praecipe as moved on behalf of the appellants. Defendant No..1 is stated to be served, however, is not represented.

2. This appeal has been filed against an order dated 30 November 2022 whereby a prayer of the appellants/plaintiffs for grant of ad-interim relief in terms of the draft notice of motion, was dismissed. The dispute as raised in the suit was primarily against defendant No.1 who did not appear before the trial Court despite notice being issued. The learned Trial Judge only on consideration that the appellants/plaintiffs

had already approached the municipal corporation and that the municipal corporation would consider the grievance of the appellants/plaintiffs, has refused to pass any order, observing that an opportunity of hearing ought to be given to defendant No.1 and accordingly, the prayer for ad-interim relief in the notice of motion was rejected. A reasoned order dated 30 November 2022 is placed on record.

3. There is substance in the contention as urged on behalf of the appellants/plaintiffs that the grievance of the appellants/plaintiffs was against defendant No.1 and defendant No.1 was not appearing, therefore, at least on the adjourned date of hearing of the notice of motion a limited protection for such period ought to have been granted. The protection as prayed by the appellant/plaintiff was that the TDR claimed by the appellants/plaintiffs be not disbursed or issued in favour of defendant No.1.

4. In the above facts and circumstances, it would be in the interest of justice that the notice of motion itself be decided. The municipal corporation has also not filed any reply. From the reading of the impugned order, it appears that the municipal corporation has not urged any contention opposing the notice of motion, as filed on behalf of the appellants/plaintiffs.

5. In this view of the matter, in my opinion, it would be in the interest of justice that the appellants-plaintiffs approach the City Civil Court and make a prayer for ad-interim/interim reliefs on the notice of

motion. Let the appellants/plaintiffs appear before the City Civil Court on 6 February 2023 at 10.30 a.m. alongwith this order.

6. The learned Judge of the City Civil Court shall consider the case of the appellants/plaintiffs and the reliefs as claimed against defendant No.1 as also the consequential reliefs as prayed against the defendant-municipal corporation and pass appropriate orders in accordance with law. All contentions of the parties are expressly kept open.

7. Till the City Civil Court passes appropriate orders either on 6 February 2023 or on any convenient date thereafter, the municipal corporation, if has not already disbursed such TDR in favour of respondent No.1/defendant no.1, shall not disburse such TDR till such order is passed by the City Civil Court.

8. It is clarified that grant of such limited protection ought not to be construed as an expression on the merits of any of the rival contentions. The City Civil Court shall pass further appropriate orders on merits of the matter and without being in any manner influenced by the limited enabling protection granted under this order.

9. Appeal from order is disposed of in the above terms. No costs.

10. In view of disposal of the appeal, pending Interim Application would not survive, the same is disposed of.

[G.S. KULKARNI, J.]