

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

**APPEAL FROM ORDER NO.981 OF 2023
WITH
INTERIM APPLICATION NO.17653 OF 2023
IN
APPEAL FROM ORDER NO.981 OF 2023**

Mahadev Martand Tupe
V/S

....Appellant

City Corporation Limited & Ors.

....Respondents

Mr. Siddhesh Bhole a/w. Mr. Ashwin Pimpale for the Appellant.
Mr. Girish Godbole, Sr. Counsel a/w. Mr. Aseem Naphade, Mr. Sagar Pawar, Mr. Sameer Tiwari i/b Mr. Amit Karle for Respondent No.1.
Mr. Nikhil Ghate for Respondent Nos. 2 to 32.
Mr. Yuvraj Narvankar for Respondent Nos. 33, 34 to 44.

CORAM : SANDEEP V. MARNE, J.

DATED : 14TH DECEMBER, 2023

P.C.:

1. The challenge in the Appeal is to the order dated 10/11/2023 passed by learned Civil Judge, Senior Division, Pune in granting ad-interim relief in favour of the Plaintiff in Application at Exhibit-5.
2. I have heard learned Counsels appearing for either parties for sometime.
3. As hearing of the Appeal progressed, it appears that the moot question involved for determining right of Plaintiff to seek injunction is, determination of the aspect of possession. It is the

case of the Appellant that possession cannot be claimed by Plaintiff on the basis of MOUs, which are silent with regard to delivery of possession and rather vocal about possession being retained by the Appellant.

4. On the other hand, it is the case of the Plaintiff that the possession had actually been handed over by execution Deed of Exchanged 29/06/2020. This aspect will have to be taken into consideration by the Trial Court while deciding the Plaintiff's Application at Exhibit - 5.

5. Perusal of the order dated 10/11/2023 would indicate that there is no discussion about handing over of possession of the suit land in favour of the Plaintiff. Instead of this Court deciding the issue of possession for the first time, it would be appropriate that the Trial Court apply its mind on the issue of possession and then determine the Plaintiff's entitlement for grant of temporary injunction.

6. The present Appeal is accordingly disposed of by requesting the Trial Court to take up the Application at Exhibit-5 and to decide the same uninfluenced by the findings recorded in the order dated 10/11/2023.

7. Considering the nature of dispute between the parties, the

Trial Court shall make an endeavour to decide the Application at Exhibit-5 as expeditiously as possible preferably by 15/02/2024.

With above directions the Appeal stands disposed of.

8. All the contesting Defendants to the suit to file their respective replies opposing the Application at Exhibit-5 on or before 15/01/2023.

9. All contentions of the parties are kept open.

10. Since the Appeal is disposed of nothing survives in the Interim Application and it is also disposed of.

(SANDEEP V. MARNE, J.)