

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 1053 OF 2023**

M/s. Dura Vida Associates And Anr. Appellants
Versus
Giriraj Heights Chs Ltd. And Ors. Respondents

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Mr. Atul Damle, Sr. Advocate a/w. Ms. Payal Var & Ms. Tanvi Kamat
Deosthale i/b. Mandar Limaye for Appellants.

Mr. Karan Jain, h/f. Mr. Mohit Bhansali for Respondent No.1 -Society.

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CORAM : SANDEEP V. MARNE, J.

DATED : 21 DECEMBER 2023.

P.C. :

The Appeal is filed challenging the Order dated 14 December 2023 passed by 3rd Jt. Civil Judge Senior Division, Thane rejecting Application at Exh.18. The Application at Exh.18 was required to be filed by the Appellant/Plaintiffs on account of the alleged conduct of the Defendant-Society in putting new display board at the site after the Trial Court rejected ad-interim relief on 05 December 2023. Perusal of the Order dated 05 December 2023 would indicate that the only reason cited by the Trial Court for refusal of ad-interim relief was non-appearance of Defendant-Society, whose presence was considered necessary by the Trial Court for hearing of the

Application for ad-interim injunction. It is Plaintiff's case that after passing of Order dated 05 December 2023, the Defendant-Society put / displayed new boards with an order of Notice at the site. This necessiated filing of Application at Exh.18 by the Appellant/Plaintiff seeking an Order of *status quo* in respect of suit land pending consideration of application for temporary injunction at Exh.5. The Trial Court has proceeded to reject the application at Exh.18 by Order dated 14 December 2023.

2. Mr. Damle, the learned senior advocate appearing for Plaintiff would invite my attention to the Order dated 21 October 2021 passed on Application at Exh.5 in Regular Civil Suit No.736 by which the Defendant-Society has been directed not to obstruct the approach road of the Plaintiff. Mr. Damle would further invite my attention to the Order 29 September 2022 passed on Application at Exh.5 in RCS No.342 of 2022 instituted by Defendant-Society where the temporary injunction has been declined in favour of the Defendant-Society. It appears that the Appeal against Order dated 29 September 2022 has also been dismissed by the District Judge on 15 April 2023. It is Mr. Damle's contention that since an ad-interim injunction is granted in favour of Plaintiffs thereby restraining the Defendant-Society from obstructing the Plaintiff from using the right of way and since temporary injunction sought by the Defendant-Society in it's own suit to restrain Plaintiff from using the right of way is also rejected (and that rejection Order is confirmed in the Appellate Court), the Trial Court ought to have granted Application at Exh.18.

3. Mr. Jain, the learned counsel appearing for Defendant-Society would submit that the Advocate on record engaged by Defendant-Society is

unable to appear before the Court on account of bereavement in his family. He would request for adjournment of hearing of the present Appeal.

4. It is brought to my notice that Application at Exh.5 filed by the Plaintiff is listed for hearing on 08 January 2024. Considering the fact that the specific allegation was levelled by the Plaintiff that the Defendant-Society displayed the new board at the site after passing of the Order dated 05 December 2023, in ordinary course, the Trial Court ought to have considered the prayer made by the Plaintiff in Application at Exh.18 in view of changed circumstances. However considering the fact that the Application for temporary injunction is coming up for hearing before the Trial Court on 08 January 2024, it is appropriate that the Trial Court considers and decides the Application for temporary injunction on 08 January 2024. In the event the Defendant-Society is yet to file its reply to the Application for temporary injunction, the same shall be filed by the Society on or before 31 December 2023 with service of copy thereof to the Plaintiff. The Trial Court shall proceed to hear the Application for temporary injunction and shall make an endeavor to decide the same by the next date of hearing i. e. 08 January 2024.

5. With the above observations the Appeal is disposed of.

SANDEEP V. MARNE, J.

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