

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 125 OF 2024
WITH
INTERIM APPLICATION NO. 1525 OF 2024

Rita Paresh Dedhia Thr. POA Nityanand Mangalprasad Rai	... Appellant/ Applicant
Versus	
Eknath Shaniwar Gowari And Others	...Respondents

Mr. G.S. Godbole, Senior Advocate i/b Dhruvad Patil with Suyash Sule for the Appellant.

Mr. Rohit Sakhadeo for Respondent Nos. 8 to 10/CIDCO.

Mr. Suresh Sabrad a/w Mr. Jeetendra Sachhdev, Abubakar Patel, Pournima Sawant i/b J.S. Legal for Respondent No.11.

Mr. Akshay Shinde for Respondent No.12/Corporation.

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CORAM : M.M. SATHAYE, J.
DATE : 26th NOVEMBER 2024

P.C. :

1. Heard learned counsel for the Appellant/ original Plaintiff, learned counsel for Respondent No.11/Developer, learned counsel for the Respondent Nos. 8 to 10/CIDCO and learned counsel for Respondent No.12/Corporation.

2. This appeal challenges the order dated 04.01.2024 passed by the Civil Judge Senior Division, Panvel below Exh.137 in Special Civil Suit No. 14 of 2016. By the said impugned order, the application of the Applicant for restraining the Defendant No.12 from issuing construction permission and sanctioning of layout and issuing commencement certificate to Defendant No.11, as also for restraining Defendant No.11

for constructing on suit land and creating 3rd party interest therein, was rejected.

3. Learned counsel for the Appellant pointed out that pursuant to undertaking given by Defendant No.11, a letter was issued on 05.08.2024 (after the impugned order) informing that the Defendant No.11 has received commencement certificate and as such, now the development would start. It is submitted that the impugned order of rejection is primarily based on the reason that since commencement certificate was not yet issued, there was no question of starting construction and that the cause of action for filing the application cannot be said to be real as neither any plan was sanctioned at that time nor any commencement certificate was issued. It is submitted that at that time, the undertaking by Defendant No. 11 was holding field.

4. In these circumstances, it is submitted that now after the issuance of letter dated 05.08.2024 by Defendant No.11, a fresh cause of action is available to the Appellant and accordingly, a fresh application Ex.172 is already filed seeking necessary reliefs, to which reply is also filed by Defendant No.11. It is informed to the Court that hearing of that application is fixed on 05.12.2024. This position is not disputed.

5. Therefore today a limited prayer is made that clarification is necessary, as rejection of the earlier application below Ex. 137 under the impugned order, may come in the way of Appellant's fresh application below Exh. 172, which is pending.

6. In the aforesaid facts and circumstances, the above Appeal and

pending interim application **are disposed of** by passing following order.

- (i) The impugned order is not interfered with.
- (ii) However, it is clarified that the fresh application below Exh. 172 filed by the Appellant shall be decided by the Trial Court on its own merits, in accordance with law, without being influenced by the observations or rejection under the impugned order. Rival contentions of all parties are kept open.

7. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)