

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.866 OF 2024
WITH
INTERIM APPLICATION NO.15288 OF 2024

Digitally signed
by
HUSENBASHA
RAHAMAN
NADAF
Date: 2024.12.20
17:20:43 +0530

Mr. Valerain Lawrenc Dias And Ors.

...Appellants

Versus

Hareshwar Govind Vartak And Ors.

...Respondents

Mr. Vineet Naik, Sr. Adv. a/w. Mr. Pawan Patil, Mr. Agnel Carreiro, Mr. Eshaan Saroop. Mr. Janmesh Vora, Mr. Rohan Kadam, Mr. Saraf i/b. M/s. Mulla & Mulla & Craigie Blunt & Caroe, for Appellants.

Mr. Bronson Barthol Dias representative on behalf of Appellants present.

Mr. Sandesh Patil i/b. Jonita Dabreo, Advocate for Respondent Nos.1 to 4.

Mr. Rohan Thakur, POA for Respondent Nos.1 to 4.

CORAM : M.M. SATHAYE, J.

DATE : 19th DECEMBER, 2024

P.C. :

1. Heard learned senior counsel for the Appellants/Defendant Nos. 1 to 3 and learned counsel for Respondent Nos. 1 to 4/Plaintiffs.

2. The Appeal is filed challenging the Judgment and Order dated 13.11.2024 passed by Civil Judge Senior Division, Vasai below Ex.5 in Special Civil Suit No. 202 of 2024.

3. After hearing the parties on the aspect of blanket injunction granted against private Defendants and Defendant No.6-Municipal

Corporation, this Court was inclined to grant interim stay to the impugned order.

4. During the course of arguments, learned senior counsel for the Appellants, on instructions, has offered without prejudice, to keep aside a commercial gala on 4th floor in building No. 8 on the suit property, of which according to the Appellants, the valuation as on today is Rs.3,52,65,893/-, to secure the Respondents/Plaintiffs' claim during the pendency of suit.

5. Learned counsel for Respondents/Plaintiffs, submitted on instructions that the valuation on the basis of which the said gala is being offered, may not be proper and he indicated that according to him, the share of the Plaintiffs as on today, works out to around Rs.5,00,00,000/-.

6. Learned counsel for the Appellants, then submitted on instructions, that so far the balance amount of about Rs.1,50,00,000/- is concerned, the Appellants are ready to furnish bank guarantee without prejudice and keep it alive during the pendency of the suit.

7. Therefore, considering that the matter is at interim stage and the parties are yet to face trial and further considering that rival claims are yet to be tested on the basis of evidence, nothing is being observed on the merits of the rival claims.

8. In view of the offer made by the Appellants, which is accepted by the learned counsel for Respondent/Plaintiffs on instructions of

the Power of Attorney holder of the Plaintiffs, who is present in the Court, the Appeal from Order is disposed of by passing following order.

- (a) The impugned order is quashed and set aside.
- (b) The Appellants are directed to earmark a commercial gala on 4th floor in building No. 8 on the suit property and keep it aside during the pendency of the suit. Such gala will be kept vacant and no third party interests of whatsoever nature will be created therein nor it will be sold.
- (c) In addition, the Appellants are directed to furnish a bank guarantee of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakh Only) in the Court of Civil Judge Senior Division, Vasai in the account of Special Civil Suit No. 202 of 2024, with an undertaking to the Trial Court that the said bank guarantee will be kept alive during the pendency of the suit. Bank guarantee be furnished within 3 weeks from today.
- (d) Aforesaid directions will operate as interim relief between the parties during the pendency of the suit, without prejudice to their rights and contentions.
- (e) The suit will be decided on its own merits and in accordance with law, without being influenced by the observations in the impugned order or the present order. Rival contentions on merits are kept open.

9. The Appeal from Order and interim application are disposed of in above terms.
10. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)