

Shailaja

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

**APPEAL FROM ORDER NO.434 OF 2024
a/w
INTERIM APPLICATION NO.9338 OF 2024
IN
APPEAL FROM ORDER NO.434 OF 2024**

Yashriddhi Builders through It's partner	]	
Sanjay Sampatkumar Jain	]	Appellant
vs.		
Allarakha Ismail through Abdul	]	
Rauf Barudgar and others	]	Respondents

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Mr. Anil Singh, Senior Advocate a/w Mr. Rohan Sawant a/w Mr. Aadarsh Vyas a/w Ms. Monika Shekhawat, K. Pandey, Mr. Nirav Karia, Mr. Sumeet Pandey, Mr. Bhavin Bhatia and Mr. Rahul Arora, for Appellant.

Mr. Anil Mishra, for Respondent No.1.

Mr. Anil Anturkar, Senior Advocate a/w Mr. Amogh Singh and Mr. Jeet Gandhi, for Respondent No.2.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 20th June, 2024.

P.C.

1. Heard Mr. Anil Singh, learned Senior Counsel appearing for the appellant, Mr. Mishra, learned Counsel appearing for respondent No.1 and Mr. Anturkar, learned Senior Counsel appearing for respondent No.2-Society.

2. Perused the impugned order dated 1st June, 2024 passed by the Holiday Judge of the City Civil Court, Mumbai. It is needless to reiterate the observations made by the learned Judge in the impugned order by which ad-interim relief was granted in favour of the respondent No.1/Original plaintiff in terms of prayer clauses (a), (b) and (c). Relief was essentially granted till the decision of the Notice of Motion. Suffice it to say that the learned Judge exceeded his jurisdiction in making certain observations which are not made by this Court in Writ Petition No.635 of 2023 on 11th August, 2023.

3. Learned Senior Counsel for the appellant invites my attention to certain observations made by the Division Bench of this Court while deciding Writ Petition No.635 of 2023 on 11th August, 2023.

Paragraph 33 of the said order is extracted below;

“33.The record bears out that practically the RCC construction of the building on the disputed plot is complete, which is also not disputed by the Petitioner. The petition was instituted at a quite belated stage. The records also indicate that Respondents No.7 and 8 obtained necessary permissions from the relevant authorities to construct a building on the disputed plot. The petition raises several disputed factual questions that require investigation and enquiry, as the parties are challenging the genuineness of the documents

relied upon by their opponents. Such disputed factual questions cannot ordinarily be gone into in the exercise of our summary and extraordinary jurisdiction under Article 226 of the Constitution of India”.

4. It is needless to say anything more, however, in view of the peculiar facts and circumstances and the manner in which ad-interim relief had been granted by the Holiday Judge, it needs to be vacated. Thus, the said relief stands vacated. The parties are relegated to the Trial Court.

5. The Trial Court, upon giving due opportunity of being heard to the respective parties afresh on the aspect of ad-interim relief decide the same as expeditiously as possible and, in any case, within two weeks from today.

6. The Appeal from Order stands disposed of in the aforesaid terms with no order as to costs.

7. In view of disposal of the Appeal from Order, pending applications, if any, also stand disposed of.

8. Needless to say that this Court has not expressed anything on the merits and demerits of the case.

9. All the rights and contentions of the parties are kept open.

[PRITHVIRAJ K. CHAVAN, J.]