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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION NO. 8083 OF 2024
IN
SECOND APPEAL ST NO. 2876 OF 2024
WITH
INTERIM APPLICATION NO. 14524 OF 2024
IN
SECOND APPEAL ST NO. 2876 OF 2024**

Aayesha Wo Mohosin Tuljapure

.....Applicant

Vs.

Hasina Wo Iqbal Chandarki and ors

.....Respondents

Mr. Ashok Tajane a/w Mr. Y. G. Thorat for the applicant

CORAM : GAURI GODSE, J.

DATE : 18th NOVEMBER 2024

ORDER:

**INTERIM APPLICATION NO. 8083 OF 2024 AND INTERIM
APPLICATION NO. 14524 OF 2024:**

1. Learned counsel for the applicant submits that the reasons for the delay are explained in paragraph nos. 3 to 7 of the application. He further submits that the second appeals raise substantial question of law on the plaintiff's claim of easementary right from the appellant's

property. He submits that the second appeal raises substantial question of law as formulated in the ground C, D and E of the second appeal memo which read as under:

C. Whether both the Courts below failed to appreciate that plaintiff has not left any open space towards North of her property. Towards the North of the house of plaintiff, there is 8-10 Ft. public lane. The plaintiff has committed encroachment over the said lane and illegally constructed water tank and utility at the said place. The plaintiffs constructions is more than area owned by him. Under such circumstances the Plaintiff is not entitled for any relief?

D. Whether both the Courts below failed to appreciate that Defendant No.3 has undertaken the construction as per the sanction map and the revised permission. The contention that the light and air in the house of the plaintiff would be obstructed are false. No privacy of the family of the plaintiff is disturbed by the construction of the defendant No.3.?

E. Whether the Appellate Court was justified to modify the decree of the Trial Court when issue No. 1, 2 and 3 in the appeal are answered against the plaintiff?

2. Issue notice of Interim Application No. 8083 of 2024 to the respondents, returnable on 20th January 2025.

3. In addition to Court notice, learned advocate for the applicant is permitted to serve the respondents by private notice and file affidavit of service before the next date.

INTERIM APPLICATION NO. 8084 OF 2024:

4. Learned counsel for the applicant submits that the plaintiff has filed the execution proceedings for executing the decree of injunction. He submits that the next date in the execution is fixed for tomorrow i.e. 19th November 2024.

5. In view of the nature of the impugned decree for injunction regarding closing the doors and windows of appellant, the execution proceedings are stayed till the next date.

[GAURI GODSE, J.]