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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 76 OF 2024
WITH
INTERIM APPLICATION NO. 803 OF 2024
IN
APPEAL FROM ORDER NO. 76 OF 2024**

Rajul Rajendraprasad Yadav and Ors ... Appellants/Applicants
vs.

Lalani Constructions Private Limited ... Respondent

Mr. Rishikesh Soni i/b. Ashok Purohit and Co., for
Appellants/Applicants.

Mr. Vivek Kantawala a/w. Saumil Kothari and Gauri Gabure i/b. M M
Legal Associates for Respondent.

CORAM : GAURI GODSE, J.

DATED : 8th JANUARY 2025

ORDER:

1. This appeal challenges the dismissal of plaintiffs' notice of motion seeking interim relief in the pending suit. The appellants have filed the suit for seeking following reliefs:

(a) This Hon'ble Court be pleased to pass an order and declaration against the Defendant herein directing the Defendant to rectify the plan sanctioned by MCGM qua the suit property viz., Shop No.1 known as Mathura Dairy Farm at

Ground floor of Building known as Kadri Manzil, P.D. Hinduja Road, Khar(W), Mumbai 400 052 with the original agreed area of the entrance i.e. 9 feet.

(b) This Hon'ble Court be pleased to pass an order of permanent injunction restraining the defendant from carrying out further construction on the land on which the suit property viz., Shop No.1 known as Mathura Dairy Farm at Ground floor of Building known as Kadri Manzil, P.D. Hinduja Road, Khar(W), Mumbai 400 052 is located."

2. By way of interim relief in the notice of motion, the appellants seek following relief:

"a) pending the hearing and final disposal of the present suit, this Hon'ble court be pleased to restrain the defendant from carrying out any further construction on the land on which the suit property viz., Shop No.1 known as Mathura Dairy Farm at Ground floor of Building known as Kadri Manzil, P.D. Hinduja Road, Khar(W), Mumbai 400 052."

3. Learned counsel for the appellants submits that as per the sanctioned plan, the respondent is constructing a pillar which would reduce the width of the entrance of the shop premises that would be handed over to the plaintiffs in terms of the agreement dated 13th August 2018. He submits that if the pillar is constructed the wide entry of the shop will be reduced. He, therefore, submits that till the plan is not modified, the respondent should be restrained from carrying out any further construction on the land on which the suit

property i.e., the proposed shop to be handed over to the plaintiffs is situated.

4. A perusal of the impugned order indicates that the plaintiffs were relying upon the order passed by this court in Writ Petition No. 2861 of 2016. By the said order the arrangement agreed between the parties was recorded and the undertaking given by the respondent was taken on record. The plaintiffs have relied upon the plan of the proposed shop which is annexed at page 52 of the Appeal from Order. It is the plaintiffs' contention that the said plan provides for 11-5 feet wide entry to the proposed shop. Thus, by relying upon the said map, the plaintiffs contended that as per the sanctioned plan the entry to the shop is reduced to 9 feet in place of 11-5 feet. He submits that as per the sanctioned plan the entry to the shop is reduced by 5 feet.

5. Learned counsel for the plaintiffs therefore, submits that the plan that indicates 11-5 feet area would mean that the plaintiffs were entitled to the entry of 9 feet to the shop. He thus, submits that the sanctioned plan has reduced the entry by 5 feet. Based on these submissions, the plaintiffs have prayed for injunction restraining the respondent from carrying out any further construction on the land where the proposed suit shop is situated.

6. Learned counsel for the defendant submits that the map relied upon by the plaintiffs was neither the part of undertaking nor was based on the order passed by this court in the writ petition. He submits that the respondent is carrying out construction as per the approved plan. He further, submits that the area agreed to be given to the plaintiffs is not reduced. He, therefore, disputes the argument raised on behalf of the plaintiffs that he was entitled to the entry of 9 feet to his shop.

7. I have perused the impugned order and the map relied upon by the plaintiffs. A perusal of the map relied upon by the plaintiffs nowhere indicates that the entry of 9 feet is shown to his shop. The learned Judge in the impugned order has also recorded that even the agreement between the parties does not provide any entry of 9 feet to the shop.

8. It is not the plaintiffs' case that there was any agreement in his favour for providing the entry of 9 feet to his shop. In any case, the plaintiffs have no right, title and interest in the land on which the construction is being carried out by the respondents. Admittedly, the plaintiffs have right only in respect of the shop pursuant to the agreement in his favour. Thus, the plaintiffs would not be entitled to seek any injunction in respect of the land which is being developed

by the respondent.

9. There is no dispute about any legality of the sanctioned plan pursuant to which the respondent is carrying out the construction. There is also no dispute about the area to be handed over to the plaintiffs. With these facts, the reasons recorded in the impugned order cannot be faulted. I do not find any substance in the argument raised on behalf of the appellants. No fault can be found in refusal of the injunction prayed for by the plaintiffs.

10. There is no merit in the appeal from order. Hence, the appeal is dismissed. In view of dismissal of the appeal from order, the pending application is disposed of as infructuous.

(GAURI GODSE, J.)