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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 863 OF 2024**

Vaikunth Villa 'A' Chs. Ltd. ... Appellant
Vs.
Mr. Dilip Krishna Matvankar and Others ... Respondents

Ms. Riddhi Shah a/w. Ms. Savita Sharma for the Appellant.

Mr. Om Suryavanshi i/b. Ms. Komal Punjabi for the Respondent
no. 9- BMC.

Mr. Jitendra Damani a/w. Mr. Dharmendra Damani and Mr. Sudhir
Bharadwaj for Respondent Nos. 1 to 3, 6 and 7.

CORAM : GAURI GODSE, J.

DATE : 6th JANUARY 2025

ORDER :

1. This appeal from order arises from the order passed by the City Civil Court refusing ad-interim relief. At the time of passing the impugned order the defendants had not filed their reply and were not represented.

2. Learned counsel appearing for the respondents except for respondent nos.4 and 5 submits that reply will be filed to the notice of motion in the City Civil Court within two weeks from today. He submits that respondent nos. 4 and 5 have expired.

3. There are disputed questions of facts involved in the appeal. When the impugned order was passed there was no reply on record. Notice of motion is pending for hearing before the City Civil Court. This court vide order dated 2nd December 2024 while issuing notice to the respondents directed the parties to maintain status quo in respect of the suit property. The suit property is a 5 metre road which the plaintiffs claims to have exclusive right.

4. The defendants are claiming rights based on the earlier order passed in the earlier suit. Hence, in such facts and circumstances if further reasons are recorded by this court at this stage on the rival contentions, it would cause prejudice to the rival contentions of the parties on merits in the City Civil Court.

5. The earlier orders and decrees passed on which the defendants are claiming rights of the suit property are passed on consent terms filed in the Suit No. 2636 of 1990 and decree passed in subsequent suit. However, society was not a party to those proceedings. The notice of motion will have to be heard after examining the rival pleadings. Prima facie there is no dispute that the suit property stands in the name of the society. Hence, if any construction is made on the suit property the same would result into multiplicity of proceedings and would prejudice the rights of the

plaintiffs. Hence, till the notice of motion is heard, the ad-interim relief granted by this court on 2nd December 2024 needs to be continued. No prejudice would be caused to either of the parties if the directions issued in order dated 2nd December 2024 is continued during the pendency of the notice of motion.

6. Hence, the appeal from order is disposed by passing the following order :

(i) The respondents (except respondent nos. 4 and 5) shall file their affidavit in reply to the notice of motion in the City Civil Court within two weeks.

(ii) The appellant is at liberty to take appropriate steps regarding service upon rest of the respondents.

(iii) Till the notice of motion is heard, by way of ad-interim relief during the pendency of the notice of motion the protection granted by this court vide order dated 2nd December 2024 shall continue.

(iv) Needless to clarify that all rival contentions of all parties on merits are kept open.

(v) Notice of motion shall be decided uninfluenced by the observations in this order.

(vi) Appeal from order is disposed of in the above terms.

[GAURI GODSE, J.]