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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 37391 OF 2024
WITH
INTERIM APPLICATION NO. 1344 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 37391 OF 2024**

Allarakha Ismail Through COA Abdul Rauf
Barudgar ... Appellant/Applicant

vs.

Vardhan Apartment CHS Limited Through
Its Chairman/ Secretary and Ors. ... Respondents

Mr. Bhushan Deshmukh a/w Shashank Patore for the
Appellant/Applicant.

Mr. Vinit Naik, Senior Advocate a/w Rohan Sawant a/w Vikas Mishra
a/w Abhishek Mishra i/b Bhavin Bhatia for Respondent No.1.

Mr. Anil Singh, Senior Advocate a/w Amogh Singh a/w Krutisha
Pandey a/w Nirav Karia a/w Adarsh Vyas i/b Bhavin Bhatia for
Respondent No.3.

CORAM : GAURI GODSE, J.

DATED : 5th FEBRUARY 2025

ORDER:

INTERIM APPLICATION NO. 1344 OF 2025 :

1. This application is for condonation of delay in filing the appeal. The contesting respondent nos.1 and 3 are represented.
2. The appeal arises out of refusal of ad-interim relief, prayed against the respondent nos.1 and 3. Hence, notice of this application to remaining respondents is not necessary.

3. In the facts and circumstances of the case, delay is condoned and the appeal from order is heard on merits.

APPEAL FROM ORDER (ST) NO. 37391 OF 2024

4. Heard learned counsels for the parties.

5. This appeal challenges the refusal of ad-interim relief to the plaintiff. Learned counsel for the plaintiff submits that the society's building was constructed on Final Plot No.190. He submits that the plaintiff has relied upon an extract of Index II for CTS No.1582 (1,2 and 3) in the name of plaintiff. The plaintiff has also relied upon a registered deed of conveyance dated 30th September 1985 in favour of the plaintiff with respect to CTS No.1582(1, 2, 3).

6. Learned counsel for the plaintiff thus submits that the plaintiff had produced on record, prima facie, document to indicate that the plaintiff has a right in respect of the plot on which the society's building was constructed. He submits that while rejecting the prayer for ad-interim relief, the learned Judge has relied upon only the observations of this Court, while dismissing a petition filed by the plaintiff for challenging the order of deemed conveyance. He submits that entire order does not even refer and examine the plaintiff's deed of conveyance an Index II.

7. Learned senior counsel appearing for respondent no.1 submits that a reply on behalf of the defendants was not filed when

ad-interim relief was refused. He submits that the respondent nos. 1 to 3 have filed application of rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure. He submits that in view of the disputed facts the motion will have to be heard after examining the rival pleadings. He further submits that the motion is listed for hearing on 17th February 2025.

8. Learned senior counsel further submits that on the next date, respondent nos.1 and 3 shall file their respective reply to the notice of motion with an advance copy to the learned advocate for the plaintiff.

9. I have perused the impugned order and the documents produced on record. Learned counsel for the appellant is right in making a grievance that the documents relied upon by the plaintiff are not examined and referred to by the learned Judge while rejecting the prayer for ad-interim relief. The rival claims depend upon disputed facts. The impugned order is passed without any reply by the defendants. Hence, any detailed reasons by this Court, at this stage on the rival contentions of the parties, is likely to cause prejudice to the rights and contentions of the parties on merits in the suit and the notice of motion. Hence, I am not inclined to record any further reasons on the rival contentions.

10. However, the plaintiff has relied upon the extract of Index II

and the registered deed of conveyance which, prima facie, indicates that documents are executed in favour of the plaintiff in respect of the land on which society's building was constructed. Hence, it cannot be said that the plaintiff has not relied upon any documents to indicate any, prima facie, right in favour of the plaintiff.

11. The rights, if any, in favour of the plaintiff can be protected at this stage, with an observation that any further actions undertaken by the defendants in respect of the suit property would be subject to final outcome of the notice of motion for interim relief.

12. Since, the contesting parties i.e. respondent nos.1 and 3 are represented, the appeal can be disposed of finally. Notice to rest of the respondents is not necessary for deciding this appeal.

13. For the reasons recorded above, the appeal from order is disposed of by passing the following order:

(I) Impugned order dated 23rd August 2024 is quashed and set aside.

(II) By way of ad-interim relief, it is clarified that any further actions undertaken by the respondent nos.1 and 3 in respect of the suit property shall be subject to outcome of the Notice of Motion Nos.2156 of 2024 and 2157 of 2024.

(III) It is clarified that the rival contentions of the

parties on merits are kept open.

(IV) Trial Court shall decide the application on its own merits uninfluenced by the impugned order and observations in this order.

10. Appeal from order is disposed of with the aforesaid observations.

11. In view of the disposal of the appeal, pending Interim Application (st) No.37393 of 2024 is disposed of as infructuous.

(GAURI GODSE, J.)