

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 236 OF 2018
WITH
CIVIL APPLICATION NO. 309 OF 2018
WITH
INTERIM APPLICATION NO. 253 OF 2020
WITH
INTERIM APPLICATION NO. 7291 OF 2024
IN
APPEAL FROM ORDER NO. 236 OF 2018**

Nita Nailesh Chheda and Anr.	... Appellants/Applicants
vs.	
Jitendra Kantilal Shah	... Respondent

Mr. D. A. Athavale for the Appellants/Applicants.

Mr. Om Suryavanshi for the Respondent- BMC.

Mr. Yazad Udwadia a/w Sandeep Thakur i/b RVJ Associates for Respondent Nos.1(d), 2(d).

CORAM : GAURI GODSE, J.

DATED : 17th FEBRUARY 2025

ORDER :-

1. Learned counsel appearing for proposed respondent no.1 submits that the suit is already dismissed and thus the present appeal from order has become infructuous.

2. Learned counsel for the appellants submits that Notice of

Motion No.2372 of 2024 is already filed by the appellants for restoration of the suit and the same is still pending.

3. In the present appeal Interim Application No.253 of 2020 is filed to bring on record name of heirs and legal representatives of deceased sole defendant in the suit. The schedule of proposed amendments indicating name of heirs and legal representatives is mentioned.

4. Learned counsel appearing for the proposed respondent no.1d submits that proposed respondent no.1a i.e. widow of deceased respondent has also expired. He further submits that proposed respondent no.1b and 1c have relinquished their rights in favour of proposed respondent no.1d. He relies upon the relinquishment deed annexed to the affidavit-in-reply filed in Interim Application No.253 of 2020.

5. In the present appeal, by an order dated 26th July 2017, this Court had protected the defendant's rights by passing an order in following terms:

“(a) that at all stages the appellant and his advocate will be kept informed of all plans submitted and sanctions or permissions obtained from the planning authorities;

(b) the plaintiff/ appellant will receive by-monthly

reports of progress of the construction;

(c) the respondents will in any construction keep separately available to and for the use of the appellant/ plaintiff an area of 1,800 sq. ft. on the second floor and higher of the structure but so divided that on any one floor the area for the appellant is not less than 900 sq. ft. If any change to these proportions is proposed, liberty to apply.

(d) in addition the respondent will make provision for allotment of four parkings for the appellant/ plaintiff. It is noted that what is proposed is stack parking.”

6. The aforesaid order was without prejudice to the rights and contentions of the parties.

7. Since the suit is already dismissed, the appeal from order has become infructuous. However, the notice of motion is still pending in the suit and the proposed respondent no.1d has already filed his reply opposing the said application.

8. Hence, in view of the aforesaid the appeal from order can be disposed of by continuing the protection granted by order dated 26th July 2017 during the pendency of Notice of Motion No.2372 of 2024.

9. The continuation of the aforesaid interim protection shall be

without prejudice to the rival contentions on merits of Notice of Motion No.2372 of 2024 and even the rival contentions in the suit.

10. The appeal from order is, therefore, disposed of by passing the following order:

(I) The interim protection granted by order dated 26th July 2017 as recorded in the above paragraphs shall continue during the pendency of Notice of Motion No.2372 of 2024.

(II) Notice of Motion No.2372 of 2024 shall be decided on its own merits uninfluenced by this order.

(III) Rival contentions of the parties on merits of Notice of Motion No.2372 of 2024 and Civil Suit No.895 of 2017 are kept open.

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

11. In view of the disposal of the appeal, pending applications are disposed of as infructuous.

12. After disposal of Notice of Motion No.2372 of 2024, the protection granted by this order shall remain operative for a period of four weeks to enable the appellants to file appropriate application

for appropriate interim relief.

13. The concerned Judge in the City Civil Court shall consider disposing of the notice of motion as expeditiously as possible without granting any unnecessary adjournments to the parties.

(GAURI GODSE, J.)