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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 11600 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14765 OF 2024**

Khurshid Bano Shaikh ... Applicant/Appellant
Vs.
Union of India, through Army ... Respondents
Area Commandant and Another

**WITH
INTERIM APPLICATION NO. 11723 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14755 OF 2024**

Gopal Gupta ... Applicant/Appellant
Vs.
Union of India, through Army ... Respondents
Area Commandant and Another

**WITH
INTERIM APPLICATION NO. 11724 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14749 OF 2024**

Dharampal Motilal Gupta ... Applicant/Appellant
Vs.
Union of India, through Army ... Respondents
Area Commandant and Another

**WITH
INTERIM APPLICATION NO. 11580 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14742 OF 2024**

Ramprasad Hiralal Rohidas ... Applicant/Appellant
Vs.
Union of India, through Army ... Respondents
Area Commandant and Another

Note : This is the corrected order vide speaking to minutes order dated 12th February 2025

**WITH
INTERIM APPLICATION NO. 11584 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14744 OF 2024**

Mataru S. Yadav	...	Applicant/Appellant
Vs.		
Union of India, through Army	...	Respondents
Area Commandant and Another		

**WITH
INTERIM APPLICATION NO. 11585 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14746 OF 2024**

Shamu Kallu Yadav	...	Applicant/Appellant
Vs.		
Union of India, through Army	...	Respondents
Area Commandant and Another		

**WITH
INTERIM APPLICATION NO. 11587 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14752 OF 2024**

Lalchand Indradev Yadav	...	Applicant/Appellant
Vs.		
Union of India, through Army	...	Respondents
Area Commandant and Another		

**WITH
INTERIM APPLICATION NO. 11589 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14753 OF 2024**

Suresh Kumar Pathak	...	Applicant/Appellant
Vs.		
Union of India, through Army	...	Respondents
Area Commandant and Another		

**WITH
INTERIM APPLICATION NO. 11592 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14756 OF 2024**

Rashid Jabbar Khan	...	Applicant/Appellant
Vs.		
Union of India, through Army	...	Respondents
Area Commandant and Another		

**WITH
INTERIM APPLICATION NO. 11593 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14758 OF 2024**

Santosh Kumar Singh	...	Applicant/Appellant
Vs.		
Union of India, through Army	...	Respondents
Area Commandant and Another		

**WITH
INTERIM APPLICATION NO. 11595 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14760 OF 2024**

Radhika Devi	...	Applicant/Appellant
Vs.		
Union of India, through Army	...	Respondents
Area Commandant and Another		

**WITH
INTERIM APPLICATION NO. 11598 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14763 OF 2024**

K Parsad Alias K Prasad	...	Applicant/Appellant
Vs.		
Union of India, through Army	...	Respondents
Area Commandant and Another		

**WITH
INTERIM APPLICATION NO. 11599 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14764 OF 2024**

Devanand Pathak ... Applicant/Appellant
Vs.
Union of India, through Army ... Respondents
Area Commandant and Another

**WITH
INTERIM APPLICATION NO. 11430 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14745 OF 2024**

Nishar Ahmed Khan ... Applicant/Appellant
Vs.
Union of India, through Army ... Respondents
Area Commandant and Another

**WITH
INTERIM APPLICATION NO. 11579 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 14740 OF 2024**

Punvasi Rajvan Gupta ... Applicant/Appellant
Vs.
Union of India, through Army ... Respondents
Area Commandant and Another

Mr. Shakeeb Shaikh a/w. Ms. Asmita Rajbhar i/b. Mr. Mangesh J. Nalawade for the Applicants.
Ms. Vedashree Phadke a/w. Mr. Raj Chourasia and Mr. Pranil Sonawane for the Respondents.

CORAM : GAURI GODSE, J.

DATE : 15th JANUARY 2025

ORDER :

1. Heard learned counsel for the applicants. These applications are for condonation of delay in filing appeals. In view of the negligible number of days of delay there is no serious opposition for condonation of delay. In the facts and circumstances of the case these applications for condonation of delay in all the appeals are allowed.

3. Heard learned counsel for the parties on the main appeals. All the appeals are filed to challenge dismissal of the appellants' application for interim relief. The appellants are the plaintiffs who filed suit seeking mandatory injunction against the defendants claiming their right to use gate of old army market. The appellants' claim in the suit is basically for direction to the defendants to open the main gate of the old army market. To support the plaintiffs' case, they relied upon a consent agreement dated 30th November 1999.

4. The prayers in the suit and the notice of motion are similar. The notice of motion in all suits are dismissed by holding that there is policy decision taken for safety reasons to close the main gate. In view of the reasons stated by the defendants for security purpose the learned Judge of the City Civil Court has refused to grant any interim protection as prayed in the notice of motion. The impugned

order also records that there is another gate at a distance of 100 meters from the main gate through which access is not closed.

5. Learned counsel for the appellants relies upon consent agreement and previous orders passed by this court on 15th March 2000. He also relies upon order passed by the City Civil Court on 2nd February 2022 in another suit filed by another shop owner. He submits that by the said order the motion filed by the shop owner was allowed and defendants were directed to open the lock of the main gate of old army market. Learned counsel for the appellants submits that the said order was never challenged and the suits are still pending.

7. I have perused the consent agreement and the orders relied upon by the learned counsel for the appellants. The consent agreement refers to keeping gate open subject to security requirement. The agreement also refers to issuing renewable security passes valid for a period of six months for entering the army area. Order dated 15th March 2000 relied upon by the learned counsel for the appellants refers to the agreement between the parties and withdrawal of the suit by Old Army Market Vendors Association on the ground that the defendants had opened the gate which was kept locked. Order does not refer to any permanent right

given to the plaintiffs or the Old Army Market Vendors Association for using the main gate which is subject matter of the dispute in the present suits. Order dated 2nd February 2022 relied upon by the learned counsel for the appellant is pertaining to another suit.

8. The impugned order in the present appeal is dated 26th March 2024. The contention of the defendants recorded in the impugned order pertains to safety issues for keeping the main gate open. The consent agreement between the parties also refer to the permission granted subject to safety conditions. In the absence of any right created in favour of the plaintiffs there cannot be any directions issued to the defendants to keep the gates open during the pendency of the suit.

9. Prayers in the notice of motion are in the nature of mandatory injunction which cannot be granted as there is no right shown in favour of the plaintiffs to use the main gate. Even otherwise there is no dispute that the alternate gate is available with the plaintiffs to access their shop. Hence no prejudice is caused to the plaintiffs.

10. In view of the aforesaid reasons, the impugned order cannot be faulted. Hence the appeals are devoid of any merits. Hence all these appeals are dismissed.

11. At this stage learned counsel for the appellants insist for issuing direction for expediting the suit. I see no exceptional reasons for issuing such directions. Such prayers are contrary to the legal principles settled by the Hon'ble Apex Court in the case of High Court Bar Association, Allahabad vs. State of Uttar Pradesh and Others¹. Hence, prayer is rejected.

[GAURI GODSE, J.]

¹ 2024 SCC Online SC 207

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