

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 9 OF 2025
IN
APPEAL FROM ORDER NO. 865 OF 2024**

Dharmil A. Bodani and Ors. ... Petitioners

Vs.

The Equus Stud Private Limited and Ors. ... Respondents

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Mr. Ravi Kadam, Senior Advocate a/w Mr. Venkatesh Dhond, Senior Advocate a/w Mr. Aashish Kamat, Senior Advocate a/w Mr. Kunal Mehta a/w Ms. Aakanksha Saxena a/w Ms. Jigisha Vadodaria and Ms. Masira Lulania i/b Neghandhi Shah & Himayatullah for the Appellants.

Mr. J. P. Sen, Senior Advocate i/b Uma Kshirsagar Wagle a/w Simran Wagle for the Respondents.

CORAM : GAURI GODSE, J.

DATED : 25th AUGUST 2025

ORDER:

1. This review petition is filed on behalf of the respondents-plaintiffs seeking review of the order dated 3rd February 2025, passed in an application for interim relief in the appeal. By the order under review, this Court granted interim relief in terms of prayer clause (a), thereby granting a stay to the order of injunction impugned in the appeal.

2. Learned senior counsel for the review petitioner points out the submissions on behalf of the appellant that are recorded in paragraph 5 of the order. The appellant had relied upon a private architect's report in the appeal. Based on the architect's report, the appellant had submitted that there was an alternate road available to the plaintiffs. Learned senior counsel for the review petitioner further points out that in paragraph 9 of the order, this Court referred to and relied upon the appellants' contentions regarding an alternate way as a relevant factor for deciding the interim application. He submits that the private architect's report relied upon by the appellants, though it was produced before this Court, was an incomplete copy, and the page of the conclusions in the report was not placed on record. The conclusion part, which was not placed before this Court, is annexed to this review petition.

3. According to the learned senior counsel for the review petitioner, the conclusions in paragraph F of the report suggest that the plaintiffs could have made the alternate road available, but there is no conclusion that it was indeed available. The private architect's report, though, was a part of the record before the trial Court; the point based on the report, as an alternate access available, was not argued before the trial Court. He thus, submits that if the architect's report is seen as a whole, it would be clear that the partial report

which was relied upon could not have been made a basis to pass the order under review. He thus submits that there is an error apparent on the face of the record, and thus, the order passed granting interim relief needs to be reviewed and recalled. To support his submissions that a document being part of the record would not be sufficient, and the points are required to be argued before the Court, he relies upon the decision of the Hon'ble Apex Court in the case of ***Mohd. Akram Ansari Vs. Chief Election Officer and Ors.***¹

4. Learned senior counsel appearing for the respondents-plaintiffs submits that inadvertently, the entire copy of the report was not filed on record. However, he refers to the pages of the report which were before this Court, which would indicate that the architect was of the opinion that the alternate means of access was available. He further points out that this Court, while granting interim relief, has not relied only upon the private architect's report, and the main reasons for granting interim relief are reflected in paragraphs 7, 8 and 9, which are with reference to the plaintiffs' claim of an easementary right for more than 20 years. Thus, the incomplete copy of the private architect's report would not make any difference in the order under review. Hence, it would not materially affect the reasons recorded by this Court, and therefore, there is no reason to

1 (2008) 2 Supreme Court Cases 95

recall or review the order granting interim relief.

5. I have perused the papers of the review petition. So far as the grievance regarding the incomplete copy of the architect's report on record is not disputed by the respondents (plaintiffs). I have perused the complete copy of the architect's report as well as the incomplete copy, which was before me while passing the order of interim relief. The copy of the report, which is part of the record, contains the observations of the private architect in clause (c), which refer to the alternate means of access and the relevant photographs related to the same.

6. The reasons to grant interim relief are recorded in paragraphs 7 to 10 of the order. Though this Court has referred to the existence of the alternate way by relying upon the private architect's report, there are other reasons recorded with reference to the plaintiffs' claim of right to use the road from the appellant's property by way of easement. In view of the particular reasons recorded for the grant of stay to the order of injunction, the fact that the complete copy of the private architect's report was not on record would not materially change the reasons in the order. Even otherwise, now I have perused the complete copy of the architect's report. The concluding paragraph of the architect's report reads as under:

F: Conclusion :

9) Considering the two motorable public roads – Access 1 & Access 2 – available upto B. K. Birla Centre for Education and the adjacent open land lying between the road and the fence of the Property of Manju Meadows Stud Farm, also belonging to Manju Meadows Pvt. Ltd., it is possible for the owners thereof to get access thereon from the existing public road upto their property and construct a gate in the fence of their property, thus removing their dependency on the existing means of access which is the subject matter of dispute between the Clients and Manju Meadows Stud Farm.

7. The conclusions reveal that it would be possible for the owners to get access to their property from the existing public road, construct a gate in the fence of their property, and remove their dependency on the existing means of access from the appellant's property. Thus, prima facie, it is clear that an alternative access is available, which can be used by the review petitioner.

8. The conclusions in clause (F) is sought to be argued on behalf of the review petitioner with reference to the clause (c) of the report. Clause (c) of the report was already part of record when the order under review was passed. I have, however, again perused clause (c) as well as the conclusion paragraph. The conclusions recorded in the report would indicate the existence of an alternate

access. Hence, the prima facie observations made by this Court in the order under review would not materially change. Hence, I see no reason to review or recall the order.

9. The Review Petition is, therefore, dismissed.

(GAURI GODSE, J.)