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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 427 OF 2025
WITH
INTERIM APPLICATION NO. 10525 OF 2025**

Mr. Mohammed Ali S/o. ... Appellant

Shaukatali Khan Prop.

Of M/s. Hindustan Timber Agency

Vs.

Rashtriya Chemicals and Fertilizers ... Respondent

Limited

Mr. Atul Damle, Senior Advocate i/b. Mr. Vimlesh Singh a/w.

Mr. Amit Jaiswar for the Appellant.

Mr. Vaibhav Joglekar, Senior Advocate a/w. Mr. Anupam

Surve. Mr. Anirudh Bhalwal, Mr. Rohan Jadhav i/b. Vyas and

Bhalwal for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 28th JULY 2025

ORDER :

1. Not on board. Taken on the production board.
2. This appeal is preferred by the plaintiff to challenge the refusal to grant ad-interim relief. Learned senior counsel for the appellant submits that since 1968 the appellant is using the right of way from the property of the respondent. He

submits that the right of way has now been blocked. Hence, the suit is filed.

3. Learned senior counsel for the appellant relies upon a letter which according to him was issued to the predecessor-in-title of the plaintiff, regarding the right of way. He therefore submits that the trial court ought to have granted ad-interim relief.

4. Learned senior counsel appearing for the respondent points out that the order under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ["Public Premises Eviction Act"] is confirmed and the encroached area has been taken over from the appellant. He submits that the appellant has an alternate way available and the right of way sought in the plaint, is not the only right of way as claimed by the plaintiff. He submits that the respondent would file affidavit in reply to the notice of motion which is pending before the trial court. He therefore submits that this is not a case to grant ad-interim relief.

5. I have perused the papers of the appeal. The suit is filed for declaration that the defendant is not entitled to obstruct the access of the plaintiff to his plot, through the plot

owned by the defendant. The suit further prays for permanent injunction restraining the defendant from obstructing the right of way. The letter dated 30th October 1968 relied upon by the appellant would not be a sufficient document at this stage to grant any ad-interim relief, in as much as the property described in the letter and the suit properties and the right of way claimed by the plaintiff will have to be examined after considering all the documents on record. The letter refers to Survey No. 14/4 and the suit is filed with regard to CTS No. 506 A/3/2A.

6. There is no dispute that the order passed under the Public Premises Eviction Act is confirmed and the encroached area by the appellant is already taken over by the defendant. In view of these disputed questions of fact and based on the material relied upon by the appellant, the trial court has rightly refused to grant any ad-interim relief. The plaintiff have not prayed for any declaration of any easmentary rights.

7. Thus, considering the prayers in the suit and the supporting documents, at this stage, it is not possible to accept the plaintiff's contention regarding the right of way for

grant of any injunction as prayed. The notice of motion is still pending in the City Civil Court. Hence, any further reasons recorded by this court is likely to prejudice the rival contentions of the parties on merits. Hence, I do not find it appropriate to record any further reasons.

8. The notice of motion shall be decided on its own merits uninfluenced by the observations made in this order or the impugned order.

9. The appeal is therefore dismissed.

10. In view of the dismissal of the appeal, interim application is dismissed as infructuous.

[GAURI GODSE, J.]