

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 669 OF 2025
WITH
INTERIM APPLICATION NO. 38314 OF 2025

Roshanlal S/o. Laluramji Joshi

Appellant
.. (Org. Plaintiff)

Versus

Asadbhai S/o. Rafiq

Respondent
.. (Org. Defendant)

.....

- Mr. Anand Mishra a/w Mr. Abdullah Shaikh i/by Mr. Ashok M. Saraogi, Advocates for Appellant
- Mr. Akbar Pindhara a/w Mr. Robin Nazareth, Advocates for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 11, 2025

P. C.:

1. Heard Mr. Mishra, learned Advocate for Appellant and Mr. Pindhara, learned Advocate for Respondent.
2. For the sake of convenience, Appellant shall be referred as "*Plaintiff*" and Respondent shall be referred as "*Defendant*".
3. In view of the timeline in the present case between 18.10.2025 when the exparte ad-interim order was passed and the date 18.11.2025 when the writ of summons was served on Defendant, it is seen that impugned order was passed on 20.11.2025 in a very short span of time without giving any opportunity to the Plaintiff to consider

the written statement filed by Defendant. Written statement (Exh. 7) was filed on 20.11.2025 when the impugned order has been passed.

4. Today when the matter is heard, both the learned Advocates have argued on the strength of their respective evidence but I refrain from going into the same for the simple reason that the order dated 20.11.2025 does not consider the same at all rather it proceeds on the premise of the statement made by Advocate for Plaintiff while obtaining exparte order and the inquiry which was made by Court and the submissions which were made by the said Advocate. Whenever interim orders are passed, they affect substantive rights of the parties to the Suit proceedings. It is the duty of the Court to consider the pleadings and documentary evidence appended to the plaint and to pass reasoned order. In the present case it is seen that Plaintiff is having his shop and he has put his signboard whereas on the corner of the Plaintiff's shop on the outside, Defendant is having his shop. Admittedly it is borne out from record that Defendant's shop has been in place for the past more than 12 years. Though Plaintiff has expressed concern with respect to acquisition of the said shop premises, there is no imprimatur or adjudication of the Court as yet to enable this Court to determine the present Appeal from Order. The impugned order is set aside and Motion is directed to be heard on merits. In that view of the matter without expressing any

opinion on merits of the matter, learned Trial Court is directed to decide Notice of Motion No. 3757 of 2025 afresh after hearing Advocates for Plaintiff and Defendant and consider the documentary evidence referred to and relied upon by them and pass a speaking reasoned order thereafter.

5. In view of the above, order dated 20.11.2025 (appended at page No. 11 of AO) stands set aside without this Court expressing any opinion on merits of the matter. Learned Trial Court will not be influenced by any of the observations made herein above while determining the Notice of Motion.

6. Mr. Mishra informs the Court that Defendant has submitted that his written statement (Exh. 7) be treated as affidavit in reply to the Notice of Motion. That is already mentioned in the order dated 20.11.2025. In view thereof, no separate reply is required to be filed by Defendant to the Notice of Motion. Written Statement (Exh. 7) shall be considered as the reply and the Notice of Motion shall be heard afresh and determined on merits.

7. In the meanwhile, as an interim arrangement Defendant shall not tamper the signboard of "*Mahalaxmi Collection*" put up by Plaintiff which is displayed on his shop from end to end. However Defendant is permitted to put up his signboard above the signboard of the

Plaintiff without blocking it and without disturbing it. This temporary arrangement shall remain until final decision in the Notice of Motion by the Trial Court.

8. Appeal from Order is disposed. Interim Application is also disposed.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.12.11
18:40:35 +0530