

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 44 OF 2017
WITH
CIVIL APPLICATION NO. 64 OF 2017

Northern Star Heights Infrastructure
Pvt. Ltd. .. Appellant
vs.
Chakala Denalankar CHSL & Ors. .. Respondents

Mr. A. M. Saraogi for Appellant.
Mr. Akshay Malviya with Mr. Rahul D. for Respondent Nos. 2 to 4.
Ms Pritha Dave for Proposed Respondent Nos. 1 to 5, 8 and 10.
Mr. U. Kazi i/b. Mr. Rajkumar Bhavsar for Proposed Respondent
Nos. 9, 11 and 12.

CORAM : M. S. SONAK, J.
DATE : 31 MARCH 2017

P.C :

1] The challenge in this Appeal is basically to the various orders made by the learned Trial Judge, which have the effect of indirectly, declining ad interim reliefs to the appellants in Notice of Motion Nos. 2022 of 2016 and 3256 of 2016 taken out in Suit No. 1694 of 2016.

2] Mr. Saraogi, learned counsel for the appellant points out that these Notices of Motion were taken out some time in June 2016 and for one reason or the other have not been disposed of.

3] Mr. Saraogi and Ms Dave appears for some of the respondents, complain that defendant nos. 2 and 4 have not filed their reply and it is for this reason that the Notices of Motion have not yet been disposed of.

4] At this stage, there is no necessity to go into the reasons as to why the Notices of Motion may not have been disposed of. However, there is no justification in adjourning the matter to June 2017 as has been done by the learned Trial Judge in this case. The Notices of Motion, are required to be disposed of on their own merits and in accordance with law one way or the other within some reasonable period.

5] Mr. Malviya, learned counsel for respondent nos. 2 to 4, who are impleaded as defendant nos. 2 to 4 in the suit states that these defendants, will file their reply as well as written statement (if not already filed) within a period of two weeks from today. This is reasonable. The defendant nos. 2 to 4 to accordingly file their reply / written statement within a period of two weeks from today.

6] Similarly, the other defendants in the suit, may also file their reply / written statement within a period of two weeks from today. Mr. Saraogi states that copy of this order will be furnished to the other defendants.

7] Mr. Saraogi points out that the appellants – plaintiffs have also taken out Chamber Summons No. 1004 of 2016 to implead 12 persons as defendants in the suit, since, according to the appellants, such persons are proper parties.

8] From out of 12 persons referred to in the Chamber Summons, Ms Dave appears for the persons listed at Sr. Nos. 1 to 5, 8 and 10. She states that on her part, there is absolutely no objection to such persons being impleaded as defendants in the suit. Similarly, Mr. Kazi, appears for the persons listed at Sr. Nos. 9, 11 and 12. He

also submits that on his part, there is absolutely no objection to the proposed impleadment.

9] The appellants – plaintiff is the *dominus litis*. Most of the persons referred to in the Chamber Summons have expressed their no objection, to being impleaded as defendants in the suit.

10] In these circumstances, the Chamber Summons is taken on board and is allowed. Necessary amendment to be carried out within a period of one week from today.

11] The newly impleaded defendants also state that they will file their reply / written statement within a period of two weeks from today.

12] Mr. Saraogi states that the copy of this order will be served upon Mr. Premnath Jaiswal and Ms Meera Naik and also process / notice in the suit will be served upon them along with copies of the plaint, notices of motion etc.

13] Mr. Kazi and Ms Dave waives notices on behalf of the defendants who are now been impleaded in the suit.

14] The learned Trial Judge is directed to dispose of the two Notices of Motion as expeditiously as possible and in any case, within a period of six weeks from today.

15] All parties to co-operate with the learned Trial Judge in the matter of disposal of the Notices of Motion.

16] It is made explicitly clear that this Court has not adverted to

the merits of the matter and therefore all contentions of all parties are left open. The Trial Court to dispose of the Notices of Motion in accordance with law and on its own merits without being influenced by any observations made in this order.

17] The Appeal from Order and the Civil Application are disposed of accordingly.

18] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka