

**Spl.C.S.No.411/2018**  
**M/s. Shivshankar Builders**  
**& Developers Vs Eknath & Ors.**

**ORDER BELOW EXH.54**

01] Perused the application and Say (Exh. 55). Heard both the sides. Today, the matter is fixed for hearing on total three applications i.e. the addition of parties (Exh. 36), interim injunction application (Exh. 38) and the application (Exh. 49) under the Bombay Stamp Act. First two applications have filed by the plaintiffs whereas the third one is moved by the proposed defendant Nos. 5 and 6.

02] Defendant Nos. 5 and 6, by this application, have raised the grievance that the the suit proceeding is being taken regularly at the instances of the plaintiffs without there being any urgency during the period of Covid-19 pandemic situation and that too in existence of SOP and Circulars issued by the Hon'ble Bombay High Court from time to time. It was also contended that the learned Counsel for defendant Nos. 5 and 6 had been to the Himachal Pradesh on his personal tour and his return was scheduled on 12<sup>th</sup> November, 2020. Despite of communicating this fact in the earlier application (Exh. 53), the matter is being taken up regularly for hearing the miscellaneous applications when one round of hearing on application (Exh. 5) is already over long back in the year 2018. As such, it is requested on behalf of the proposed defendant Nos. 5 and 6 to

first record the aspect of urgency in the matter before proceeding with the case.

03] True that the hearing of the interim application (Exh.5) was taken up and decided once on 03/11/2018 declining the relief of injunction. The plaintiff then challenged the Order under Appeal from Order No. 194/2019 before the Hon'ble Bombay High Court. During the course of said proceeding, the learned Counsel Mr. Irdi Vohra appearing on behalf of original defendant has submitted that the suit property is in their possession, they have not created third party right and have not started any construction activities. Similarly, learned Counsel Mr. Warunjikar appearing on behalf of the original plaintiffs (Appellants) has submitted that he has received instructions from his client to withdraw the present Appeal from Order with liberty to file application in the trial court for carrying out amendments in the plaint and move for ad-interim relief. On that basis, the said proceeding was disposed of on 24/04/2019 with liberty to file the amendment application in the Trial Court and also move for fresh application seeking the ad-interim relief.

04] If the aforesaid order is taken into consideration, it would disclose that there is scope for drawing inference that the plaintiffs have waived their right to challenge the then existing Order passed below Exh. 5 on the then grounds mentioned in the appeal memo. At the same time, it can also be inferred that

they have reserved their right to file a fresh ad-interim application on the basis of change in circumstances as proposed under the proposed amendment application. It also cannot be ignored that the suit property is transferred in favor of proposed defendant Nos. 5 and 6 in the meantime and they have started construction over there. This fact is not disputed by proposed defendant Nos. 5 and 6. It means the position of the suit property which was lying as on day of disposal of the aforesaid order has now been changed. Taking into consideration the right reserved by the plaintiffs and change of position of the suit property, I do not find any irregularity for claiming urgency in the matter on behalf of the plaintiffs.

05] No doubt, one round of interim application has been concluded declining the equitable relief of injunction, however, it cannot be ignored the right reserved by the plaintiffs to further claim the interim relief on the basis of change in circumstances. Hence, the matter will have to be considered as extreme urgent in the facts and circumstances in the case in hand. Such type of cases are covered under the SOP and Circulars issued by the Hon'ble Bombay High Court from time to time in the Covid-19 pandemic situation. It will be different aspect whether the plaintiffs will be entitled for the interim relief in the light of earlier finding or what, but his right of being heard in such matter will have to be treated as proper. Hence, I hold and record my opinion that the present case the matter of extreme urgent and will have to be proceeded further as it stands for.

Thus, both the parties are directed to proceed with the matter. Now the case is fixed on 06/11/2020 with the consent of the parties for hearing on pending applications (Exhs.36,38 and 49).

Panvel.

( U. L. Pathak )

**Date : 03/11/2020**

**3<sup>rd</sup> Jt. Civil Judge, Sr. Dn., Panvel.**

**Spl.C.S.No.411/2018**  
**M/s. Shivshankar Builders**  
**& Developers Vs Eknath & Ors.**

**ORDER BELOW EXH.1**

01] The proposed defendant Nos. 5 and 6 have pointed out and submitted that this court has recorded the specific contention that they have started construction over the suit property particularly in para – 4 clubbed with the other contentions, but as a matter of fact they have just received the commencement certificate on 22/10/2020. The plaintiff has also admitted that the construction has not been started yet but further stated the defendants be restrained from making any construction.

02] Taking into consideration the respective contentions raised by the Counsel for the proposed defendant Nos. 5 and 6 and the admission/statement given by the plaintiff, the fact is crystal clear that there is no construction activity is going on as on today. Hence, this fact is corrected and made know to both the parties present before me. So the present order be treated as part of the order below Exh. 54 in order to have correct facts on record. The proposed defendant Nos. 5 and 6 are directed to file the copy of commencement certificate. The matter is fixed on 09/11/2020 at 11.00 a.m. The parties to note.

Panvel.

Date : 06/11/2020

( U. L. Pathak )

3<sup>rd</sup> Jt. Civil Judge, Sr. Dn., Panvel.