

RCS 03/209.
Prakash Savla Vs. Hirji Savla & Ors.
CNR NO. MHTH02-000004-2019.

ORDER BELOW EXH.11.

Gone through the application and reply of defendant No.5, wherein based on cause of non-receipt of copies of the concerned documents, prayer is contested. Shri. O. L. Pandey for the plaintiff reiterated the submission canvassed by him on 02.01.2019. None present for defendant No.5 though repeatedly called. The suit has been ordered to ex-parte as against defendant No.1, 2-a to 2-d and defendant No.3.

2. It is expressed that if interim protection till the defendant submit the reply is refused then that would lead to multifariousness.

3. At the first blush, I would like to point out that the principles governing grant or otherwise of temporary injunction application under Order 39 Rule 1 & 2 of the CPC stand on different footing then the circumstances/grounds on which prayer for status-quo has to be decided.

4. No doubt, pending hearing the status of the suit property is ordinarily to be protected by passing appropriate order, however, passing such order, the exact status of the suit property as on the date of decision of such application is a prelude. In the application barring bald and amorphous statement regarding apprehension of creating third party interest no formal proof such as advertise in the local newspaper or any of the document to show intent of the

concerned defendants to create third party interest are filed. No document to show that a proposal for development in relation to the suit property as submitted by concerned defendants is under consideration of the defendant No.5/corporation. In the absence of such material passing blanket order at such incipient stage, when defendant No.5 is yet to file the reply is uncalled for. It is not a rule that the adversary should submit such reply on the first day of appearance. In view of such antecedents, mere default of the adversary/defendant No.5 cannot be a base for mechanically passing status-quo order. Therefore, the present application is rejected.

5. Nonetheless, considering the nature of the suit, defendant No.05 is directed to submit the reply on the interim application (Exh.05) on next date (before recess) without fail. Be noted.

Thane.	Sd/-
Dated.17.01.2019.	(N.G.Deshpande)
	6 Th Jt. Civil Judge S.D. Thane.