

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 475 of 2024****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2024****In R/SECOND APPEAL NO. 475 of 2024**

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SHARADKUMAR GIRDHARLAL KOTAK & ORS.**Versus****JENUBEN BAUDIN SUMRA & ORS.**

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Appearance:**GANDHI LAW ASSOCIATES(12275) for the Appellant(s) No.****1,2,2.1,2.2,2.3,2.4,2.5,2.6,3,3.1,3.2,3.3,3.4****MR VISHAL C MEHTA(6152) for the Respondent(s) No. 1**

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**Date : 26/11/2024****ORAL ORDER**

1] Heard Learned Senior Counsel, Mr. Rashesh Sanjanwala, appearing for the appellants.

2] Mr. Sanjanwala, Learned Senior Counsel submits that the appellants, who are the original plaintiffs, filed a suit seeking a declaration, permanent injunction, and recovery of possession of the disputed property. The trial Court allowed the suit in their favor.

3] Aggrieved by this decision, the original defendants filed an appeal before the appellate court. The appellate court allowed the appeal in favor of the original defendants. Subsequently, the original plaintiffs filed an application before the appellate court seeking a stay on the operation, implementation, and execution of the appellate court's order. The appellate court granted a stay for one month. During this interim period, the appellants filed the present second appeal before this Court.

4] Mr. Sanjanwala, Learned Senior Counsel submitted that due to on 30.10.2024, the matter is listed before Court, number of matters have been listed and Diwali is approaching and considering the seriousness and urgency in the matter, urgent hearing is needed and due to paucity of time, matter could not be reached and therefore, at the end of the day, a request made, which was accepted by the learned advocate Mr. Vishal C. Mehta, who appears as a Caveator, matter is posted on 26.11.2024.

5] Learned advocate Mr. Vishal C. Mehta, has orally made a statement that any action would not be taken on the part of the respondents.

6] Mr. Sanjanwala, Learned Senior Advocate has further submitted that during the interregnum period, the period of stay granted by the learned trial Court has expired and the respondents have taken the benefit of such situation and created third party rights and he has filed affidavit to that effect along with photographs, which clearly goes to show that despite the statement made by the learned advocate for the respondents, the respondents had created third party rights by giving permission to enter into the premise as a tenant and the photographs clearly goes to show that the name of owner . The recital of those paragraphs mentioned in the paragraph Nos. 3 and 4 are reproduced here under.

“3. Despite the oral assurance given by the learned advocate for the respondents before this Hon'ble Court, the Respondents have started making changes in the suit property after the expiry of the period of stay of execution of the Judgement as on 18.10.2024. In this regard, the Applicant seeks to produce certain photographs of the suit property showing the existence of certain shops on the suit property prior to 18.10.2024. The shops include 'Chai and Snacks Bar', 'Royal Toy and Cycle Zone', and 'Ma Mogal Krupa the Café'. Annexed hereto and marked as Annexure

I Collectively are the time stamped photographs showcasing some part of the property, prior to 18.10.2024.

4. After the expiry of the period of stay of execution of the Judgement as on 18.10.2024, some shops were replaced in the suit property on the same place. Further, some part of the property are also shown as to be given on rent by the Respondents. Recently as per the information of the Appellants, (1) 'Nilu Garden Restaurant' and (2) Ganesh Madras Cafe have come up in one of the areas of the property. Annexed hereto and marked as Annexure II Collectively are the time stamped photographs of the property showcasing development carried out by the Respondents after 18.10.2024."

7] Considering the above circumstances, Mr. Sanjanwala Learned Senior Counsel contended that a stay is required to protect the interests of the appellants.

8] Learned advocate, Mr. Vishal C. Mehta, appearing as Caveator, submitted yesterday evening he has received a copy of the affidavit and has come to know about the said fact. Therefore he made an inquiry from his counter part and has come to know that no third party rights have been created by the respondents only after tenants were permitted to do business in the premises and, therefore, he further submits that he is no more appearing in this matter and he has already issued a notice through RPAD to the respondents and he has tendered a copy of the said notice to the Court also and requested that the hearing of the main matter be deferred for one week so during that period the notice would be served to the respondents and requested for the time of one week.

9] Considering the arguments canvassed by the learned advocates of the rival parties, papers available on record as well as development took place in the matter during the pendency of the proceedings, *prima-facie* it

seems that respondents have engaged an advocate, who appears as an Caveator and made statement orally before this Court and the said fact is also clearly mentioned in the notice issued by him, placed on record, which clearly goes to show that the respondents have tried to create third party rights during the pendency of the proceedings by permitting third party to enter into the premises as a tenant. Therefore, at this juncture, ad-interim injunction in terms of paragraph 9(B) is granted till the next date of hearing and it is further directed that both the parties are directed to maintain the status quo till the returnable date.

VVM

(DIVYESH A. JOSHI,J)