

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 1257 OF 2007

GIRISH NAUTAMLAL JANI)...PLAINTIFF

V/s.

MR.DORAB FURDOON SEERVAI AND OTHERS)...DEFENDANTS

**WITH
INTERIM APPLICATION NO. 936 OF 2026
WITH
INTERIM APPLICATION NO.232 OF 2023
WITH
INTERIM APPLICATION NO. 2209 OF 2021
WITH
INTERIM APPLICATION NO. 2489 OF 2021
WITH
INTERIM APPLICATION NO. 3081 OF 2021
WITH
INTERIM APPLICATION NO. 495 OF 2022
WITH
INTERIM APPLICATION (L) NO. 7279 OF 2026
WITH
INTERIM APPLICATION NO. 4091 OF 2022
WITH
NOTICE OF MOTION NO. 1018 OF 2016
IN
SUIT NO. 1257 OF 2007**

Mr.Anuuj Narula a/w. Mr.Sayeed Mulani and Mr.Tushar Agarwal i/by
Mulani & Co., Advocate for the Applicant in IAL/7279/2026 and
IA/4091/2022.

Mr.Aseem Naphade a/w. Mr.Ronak Shah and Ms.Charu Budhadev i/by
Dhru & Co., Advocate for the Respondents no.1 and 2 in
IAL/7279/2026.

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Mr.Ankit Lohia a/w. Ms.Rajshree Dhole and Ms.Pratibha Rupnawar, through video conferencing, Advocate for the Applicants in IA936/2026.

Ms.Khushbu Prabhu, Advocate for the Applicants in IA/232/2023.

Mr.Mahernosh Humranwala, Advocate for the Defendants no.1a(i) and 1a(ii).

CORAM : **ABHAY AHUJA, J.**

DATE : **5th MARCH 2026**

P.C. :

1. When the matter is called out, Mr.Narula, learned Counsel, appears and submits that there is an Interim Application (Lodging) No.7279 of 2026 which would need this Court's urgent attention, in as much as, third party to the property, viz. Plot bearing No.35-C/1, C.T.S.No.1070, 1071/1, 1070/2, admeasuring 3571 sq.mtrs. or thereabout, situated at TPS-II, Santacruz West, Juhu Koliwada, Mumbai – 400054, together with Buildings, out houses, structures and garages standing thereon (the "Suit property"), is carrying out construction without any permission of the owners or their legal representatives and that this Court may pass orders of restraint.

2. The learned Counsel appearing for the Respondents no.4 to 6 support the case pleaded by Mr.Narula and seek this Court's urgent intervention for a restraint.

3. Mr.Naphade, learned Counsel, appears for the Respondents no.1 and 2 and seeks some time to file a reply submitting that in view of the report of a Structural Auditor upon a notice from the Municipal Corporation declaring the structures on the said land as C2 A, only repairs are being carried out, which is vehemently opposed by the learned Counsel appearing for the Applicant as well as Respondents no.4 to 6.

4. Ms.Khushbu Prabhu, learned Counsel, appearing in the matter submits that an Interim Application has been filed seeking to implead the legal representatives of the deceased Plaintiff as parties to the Suit and the said application is pending and that for the time being, she is supporting the Applicant, that there be a restraint on any construction activity on the said plot.

5. After this matter is heard for some time and this Court has shown an inclination to grant a restraint, Mr.Naphade, on instructions, submits that his clients viz. the Respondents no.1 and 2 would hold their hands and immediately stop any repairs or other construction activity and no such repairs or construction will be carried out on the Suit property till the next date and also that he has instructions to agree for a direction that a Court Commissioner be appointed to ascertain the exact situation

of ground at the Suit property. The learned Counsel appearing for the Applicant and for the Respondents no.4 to 6 and also for the purported legal heirs of the Plaintiff have no objection if a Court Commissioner is appointed.

6. Having heard the learned Counsel and having considered their submissions, the following order is passed :

ORDER

- (i) Let the Respondents including the Respondents no.1 and 2 file reply within a period of two weeks with copies to the other side. Rejoinder in two weeks thereafter, with copies to the other side.
- (ii) This Court with the consent of the learned Counsel for the parties present in Court appoints Mr.Dilip Gurav, First Assistant Master of this Court, to be the Court Commissioner to visit the said plot and place a report before this Court with respect to the factual situation and in particular as to whether only repairs are being carried out or whether construction activity is going on at the site. In order to assist the Court Commissioner this Court again with the consent of the learned Counsel appearing for the parties, appoints AT & TS Associates, Architects, having office at 4B, Mohatta Building, 4th Floor, Dr.E.Moses Road, Worli, Mumbai

– 400018, to assist the Commissioner. Let representatives of the parties also to accompany the Court Commissioner.

- (iii) The parties to co-operate with the Commissioner and the Architect appointed by this Court and also equally bear their costs charges and expenses.
- (iii) The visits to the said Suit property/plot/premises be fixed at mutually convenient dates and times.
- (iv) Let the Commissioner endeavour to place his report before this Court within a period of three weeks with copies to all concerned.
- (v) The statement made by Mr.Naphade on behalf of the Respondents no.1 and 2 that Respondents no.1 and 2 would hold their hands and immediately stop any repairs or other construction activity and no such repairs or construction will be carried out till the next date is accepted.

7. List on **2nd April 2026**.

(ABHAY AHUJA, J.)