

**(2003) 02 SC CK 0069**  
**In the Supreme Court Of India**  
**Case No : Civil Appeal No. 1586 of 2003**

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| Ajay Kumar Patil               | Vs | APPELLANT  |
| Roshan Godrej Kanga and Others |    | RESPONDENT |

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**Date of Decision :** 21-02-2003

**Acts Referred:**

**Citation :** (2003) 02 SC CK 0069

**Hon'ble Judges :** R. C. Lahoti, J;Brijesh Kumar, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. Leave granted.

2. The appellant and the respondent No. 1 are neighbours owning adjoining properties. The appellant has commenced some construction in his own property which is objected to by the respondent No. 1 on the ground that the construction which is being carried on by the appellant is in deviation of the building plans sanctioned by the municipal corporation and is also likely to cause damage to her own property. In fact, it is stated that some damage to the boundary wall has already resulted on account of the appellant having sunk foundation to make a cellar in departure from the building plan sanctioned by the municipal corporation. It appears that the municipal corporation served a notice on the appellant proposing to take action against the appellant for alleged deviation from the building plans. The appellant filed a civil suit on 28.6.2001 and secured an ad interim injunction restraining the municipal corporation from taking action on the notice. The respondent No. 1 sought for her intervention in the civil suit which was denied by the Trial Court but allowed by the High Court on 13.9.2001 whereafter the Respondent No. 1 is a party in the civil suit.

3. On 2.11.2001 the respondent No. 1 filed a writ petition impleading the appellant and the municipal corporation as parties to the petition, wherein the subject matter is the same construction which is also the subject matter of the

civil suit. The High Court has issued a restraint order whereby the appellant has been enjoined from proceeding with further construction until the civil suit is decided.

4. After hearing the learned counsel for the parties, we are of the opinion that there is no occasion for respondent No. 1 to have initiated parallel proceedings in the High Court when the civil Court was already seized of hearing on the same subject matter of dispute. It was open to the municipal corporation-respondent No. 2 or the adjoining owner-respondent No. 1 to make an appropriate prayer to the civil Court either for vacating the injunction order operating in favour of the appellant or for putting the appellant on terms or restraining him from proceeding ahead with the construction which prayer, if made, before the civil Court would have been heard and decided according to law and there would have been no occasion for parallel independent proceedings, one before the civil Court and the other before the High Court.

5. Inasmuch as, we are of the opinion that the appropriate relief sought for in the writ petition filed by the respondent No. 1, as also any relief which the municipal corporation may seek for, can be allowed by the civil Court, the proceedings and the interim orders passed by the High Court are uncalled for and deserve to be set aside. The respondents herein, i.e., the adjoining owner-respondent No. 1 and the municipal corporation-respondents No. 2 are allowed the liberty of approaching the civil Court and seeking appropriate directions from the civil Court itself. They may move such an application at the earliest and the civil Court shall expeditiously hear and decide the application as and when made. To enable the respondents to move an appropriate application before the civil Court, it is directed that for a period of two weeks from today, all the parties shall maintain status quo as obtaining today in respect of the suit property. The parties shall then be governed by the orders passed and to be passed by the civil Court during the pendency of the civil suit. The writ proceedings in the High Court and the orders passed therein shall stand set aside.

6. The appeal is allowed. No order as to the costs.