
(2005) 03 BOM CK 0111
In the Bombay High Court
Case No : Appeal From Order No. 172 of 2005

Kishan Naraindas Daryani and Others	APPELLANT
Vs	
Pessumal Chimandas Veleja and Others	RESPONDENT

Date of Decision : 09-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, Order 6 Rule 14A

Citation : (2005) 03 BOM CK 0111

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : G.S. Godbole, instructed by Jaiwant S. Chanclanani, for the Appellant; R.S. Apte and A.A. Garge for Respondent Nos. 1 to 6 and Vijay Patil, for the Respondent

Judgement

A.S. Oka, J.—On the last two dates i.e. 1-2-2005 and 21-2-2005 I have finally heard the Appeal from Order. This is a very disturbing case where an order of temporary injunction passed by the Court has been violated by constructing a building in gross breach of the order and by inducting third parties in possession of the flats in the building. The Respondent Nos. 1 to 6 are the contesting Respondents who are represented before me by an Advocate. The Respondent No. 8 is also represented before me. Considering the nature of the impugned order it is not necessary to serve the notice on Respondent No. 7 and therefore the Appeal was heard finally at admission stage.

2. The challenge in this Appeal is to the Judgment and Order dated 17th January 2005 passed by the learned 3rd Ad hoc Additional District Judge, Kalyan by which the application at Exh. 74 made by the Respondent No. 1 has been allowed. The said application was made under the provisions of Order XXXIX Rule 2(A) of the Code of Civil Procedure, 1908 (hereinafter referred to as the said. Code). By the impugned order, the Appellants have been directed to be detained in civil prison for a period of one month. There is an order of attachment passed by the learned Trial Judge. The learned Trial Judge directed the Respondent No. 8-

Municipal Corporation to take legal action in respect of the demolition of illegal construction of the disputed building made by the Appellants and to submit a compliance report within a period of two months.

3. The Respondent No. 1 filed R. C. S. No. 189 of 1998 against the Appellants and the Respondent No. 7 for declaration and injunction. The case of the Respondent No. 1 in the civil suit is that the Appellants and the Respondent No. 7 started construction of a building in violation of relevant rules. The case of the Respondent No. 1 is that the construction has been proceeded without leaving open space as required by law and the Appellants and the Respondent No. 7 were intending to construct seven storeyed building in contravention of D.C. rules. On application for temporary injunction in the suit filed by the Respondent No. 1 was rejected by the Trial Court. Being aggrieved by the rejection of the application for temporary injunction, the Respondent No. 1 preferred Misc. Civil Appeal No. 207 of 1988 in the Court of the District Judge, Thane. In the said Appeal an application was made for temporary injunction. By Judgment and Order dated 29th October 1988 the learned v. Additional District Judge, Thane allowed the said Application for temporary injunction and Respondent No. 1 to 4 in the Appeal i.e.. Appellants and Respondent No. 7 herein were restrained from proceeding with the construction of building standing on Room No. 197 to 201 on Block No. A-33 and 34, Ulhasnagar, extending it horizontally or vertically till the decision of the said Appeal. The Appellants and Respondent No. 7 herein were also directed to file an Affidavit setting out the stage of construction as it existed on 30th October 1988. The learned Additional District Judge clarified that the Respondents in the Appeal were not restrained from carrying out the work of finishing in building which has already been erected. However, they were restrained from creating any third party interests till the decision of the Appeal.

4. In compliance with the said direction to file Affidavit, on 2nd November 1988 an Affidavit was filed on behalf of the Respondents in the said Appeal by the Appellant No. 2 Shri Purshottam Thakurdas. In the said Affidavit it is stated as under :

"2. I say that the Hon''ble Court was pleased to allow the injunction application filed by the appellant partially and have directed us restraining us from making any additional construction laterally as well as vertically.

3. I and partners have noted the order. In the said order the Hon''ble Court has been pleased to direct us to file an affidavit and place on record the present position of the structure.

4. I say that in the building there are two parts, A and B. A part on the northern side to room No. 196 of Block- 1A-32 and B part is near the No. 202 belonging to the appellant. In the B portion, 5 floor of R. C. C. work is over and on 2nd floor ground and 1st brick work is nearly over. The brick work in upper 3 floors was taken up when the injunction order has been brought to our notice. On the A side 3 slabs are put. Brick work on ground floor was over and brick work on second

floor was nearly on completion."

(Emphasis supplied)

5. The Additional District Judge, Thane appointed a practicing Advocate as a Court Commissioner who visited the property on 15th November 1988. He submitted an interim report by observing that he was obstructed by the Appellants. In the interim report he stated that,

"a) That on 15-11-1998 the construction of the building was going on.

b) In the North portion three slabs were completed and on Southern portion three slabs work was completed as for the 4th slab centering was done.

c) On the first floor brick work was in progress and in some portions plastering work was being done.

d) In the ground floor in the North Part, brick work is done and on Southern side, brick work of half wall was done and the labourers were doing the work."

(Emphasis supplied)

6. An application was made on 19th April 1991 by the Respondent No. 1 at Exh. 74 under Order XXXIX Rule 2(A) of the said Code in the said pending Appeal. In the said application it was asserted that notwithstanding the order of temporary injunction granted by the Court, the Appellants and the Respondent No. 7 proceeded with construction and they completed six floors in each part of the building and construction of all the floors was completed in all respects. It is alleged that after the date of passing of order of temporary injunction, the Appellants and the Respondent No. 7 entered into the various agreements for sale of the flats in the building on the dates specified in the application. Accordingly, Respondent No. 1 prayed for taking action against concerned Respondents for committing gross breach of temporary injunction.

7. A reply was filed by the Appellant's and Respondent No. 7 to the Application at Exh. 74. One of the contentions raised in the reply was that Respondent No. 7 M/s. V. P. Builders has developed the property and Appellants herein were not partners of the said firm. It is contended that the Appellants are the partners of M/s. Perfect Builders and the said firm has developed the property. It is contended in the reply that the construction carried out by the Respondents is as per the approved plan of construction and there is no breach on their part. The said reply was filed on 26th July 1991.

8. In the year 1996 the Court of Additional District Judge, Thane started sitting in Camp at Kalyan which is a Taluka place in Thane District. In September 1996, a regular Court of Additional District Judge, Kalyan was established by necessary notification issued under the Bombay Civil Courts Act, 1869. It is not in dispute that pending Appeal in which order of injunction was passed was transferred initially to the Court of Additional District Judge, Thane, Camp at Kalyan and later on to the newly established Court of the Additional District Judge, Kalyan.

9. It appears that the Appellants did not attend to the proceedings after transfer of the said Appeal to Kalyan. On 11th October 2004 the learned Additional District Judge directed the Respondent No. 8-Corporation to submit an Affidavit on factual aspect of the construction carried out on the suit property. Accordingly, an Affidavit came to be filed at Exh. 97 by the Deputy Commissioner of Respondent No. 8-Corporation stating therein that a building consisting of basement plus ground floor and six upper floors is constructed in violation and in contravention of building permission. It is stated that about 48 flats were constructed in excess of available F.S.I. and no completion certificate or occupation certificate is obtained either from the Respondent No. 8 - Corporation or from the erstwhile Municipal Council. It is an admitted position that when the application at Exh. 74 was heard the Appellants and Respondent No. 7 were absent. Pinter considering the entire material on record the learned Additional District Judge found that there was a gross breach of order granting temporary injunction on the part of Appellants by carrying out the construction and by creating third party interests in respect of the flats in building.

10. Shri Godbole, learned Counsel appearing for the Appellants submitted that after the Appeal was transferred to the Court at Kalyan, a notice was ordered to be issued of the transfer to the parties. He submitted that the Appellants were not served with the notice as a result of which they could not remain present before the Court at Kalyan. He submitted that as the drastic order of directing imprisonment of the Appellants has been passed by the Appellate Court, opportunity may be given to the Appellants to contest the matter by remanding the application at Exh. 74 to the Appellate Court. He submitted that the Appellate Court has relied upon the material which became available only after transfer of the Appeal to the Court at Kalyan and reliance is also placed on the Affidavit filed by the Deputy Commissioner of Respondent No. 8-Corporation which was filed on 11th October 2004. He submitted that the Appellants are entitled to lead evidence to establish that there is no breach committed by them and even assuming that there is any breach, the same was not wilful.

11. Shri Apte for the Respondent Nos. 1 to 6 has supported the impugned order. He submitted that perusal of the Roznama shows that the Appellants were all along represented by an Advocate. Moreover, after the transfer of Appeal, on some of the dates the Appellants have appeared. He submitted that the Appellants were aware of the pendency of the Appeal and the pendency of the application at Exh. 74 and the Appellants, ought to have attended the Court at Kalyan. The learned Counsel for the Respondent No. 8 also supported the impugned order by contending that as the construction of the building is unauthorised, the Respondent No. 8 is entitled to take action of demolition.

12. On 14th February 2005 when the Appeal was placed before me, I made a query to the learned Counsel for the Appellants whether the Affidavit dated 2nd November 1988 referred to the Application under Order XLIII Rule 2A was filed by the Appellant No. 2 on behalf of the Appellants. The learned Counsel for the

Appellants on instruction from Appellant No. 2 who was stated to be present personally in the Court, stated that the Appellant No. 2 had filed the said Affidavit dated 2nd November 1988. It was pointed out in the Affidavit of the Deputy Commissioner of the Respondent No. 8- Corporation that the construction of multi storeyed building was completed and that the flat purchasers were put in possession of the flats in building. Therefore, by order dated 14th February 2005 the Appellants were directed to file Affidavit selling out following particulars:

- i) Particulars of the construction carried out by them after 2-11-1988 (i.e. the date of filing Affidavit of the Appellant No. 2)
- ii) Details of flat/premises sold by them to the purchasers after 2-11-1988 with reference to total consideration received by the Appellants, dates of documents/agreements executed in favour of the perspective purchasers and dates on which perspective purchasers are put in possession.

13. There is an Affidavit filed by the Appellant No. 2 dated 23rd February 2005 in purported compliance with the order dated 14th February 2005 passed by this Court. In the said Affidavit it is contended that by the year 1988 framework of the building Pali Hill has already been put up and finishing work was done subsequently and the building was completed. It is stated in the Affidavit that this was only venture of the Appellants-builder and as the firm had become defunct long back, no record was available. It was stated in the Affidavit of the Appellant No. 2 that it cannot be said with certainty what construction was carried out in respect of the said building after 2nd November 1988. It is stated that the Appellants were unable to get any copies of the agreements executed by them after 2nd November 1988. It is stated that they could get copies only two agreements. The first is executed on 20th April 1989 by M/s. Perfect Builders of which the Appellants are partners in favour of Shri Kishin T. Mulrajani and the second agreement is dated 31st December 1990. The said agreements are relating to two flats wherein consideration accepted is Rs. 1, 03, 500/- and Rs. 71. 250/- respectively. A case is sought to be made out that the profits earned by the Appellants can be maximum two lakhs. It is stated that the Appellants were ready and willing to cooperate with the flat purchasers for regularisation of unauthorised construction by putting up a proposal for regularisation to the Respondent No. 8-Ulhasnagar Municipal Corporation.

14. There is an affidavit filed by the Respondent No. 2 in which it is stated that the Advocates for the Appellants continued to remain present after transfer of the Appeal to the Court at Kalyan and one of the Advocate representing the Appellants was present in the Court room on the date on which the order impugned was passed.

15.. I have considered the rival submissions It is an undisputed fact that an Affidavit was filed by the Appellant No. 2 on behalf of the Appellants on 2nd November 1988 in compliance with the direction given by the Appellate Court while passing the order of temporary injunction. In the said Affidavit it was

stated that the building was being constructed in two parts. It is stated that In part "B" R. C. C. work of 5th floor was over and in part "A" construction of 3 slabs was completed.

16. When the Court Commissioner visited the site on 15th November 1988 after notice to the Appellants, an attempt was made by the Appellants to obstruct him. He recorded that on that day construction of the building was going on. He noted that on the first floor brick work was in progress and plastering work was being done.

17. An order was passed by the Appellate court on 11th October 2004 directing the concerned Officer of the Respondent No. 8 to file an Affidavit setting out the following factual position of the constructions:

- 1) What are the numbers of floors and the building standing on Room No. 197 to 201 of Block No. A-34, 34 of Ulhasnagar ?
- 2) Whether the building on the aforesaid rooms has been constructed in consonance with the approved sanctioned plan ?
- 3) Whether the building has been constructed in contravention of construction rules and bye-laws ?
- 4) Whether respondent No. 5, Ulhasnagar Municipal Council or Corporation has issued any Completion Certificate or Occupancy Certificate in respect of this building ?
- 5) What are the names of persons who have occupied this building ?

Accordingly, an Affidavit was filed by Mr. P. D. Kolekar, Deputy Commissioner of Respondent No. 8-Corporation which read thus :

"2 As regards to query No. 2, I say that the construction of the multi-storeyed building is in violation of F.S.I. and D.C. Rules and more particularly in contravention of the sanctioned building plan bearing No. UMC/TPD/BP/303 dated 1-6-1988 sanctioned in the name of Shri Dharamdas Parsram and Shri Bhagwandas Topansdas, Shri Mirchumal and Shri Udharam,

3. As regards to query No. 3, I say that the building plan sanctioned by the erstwhile council vide Commencement Certificate dated 1-6-88 for the development provided as under :

The area of the plot is 1018.19 sq. mtr. The floor area ratio was permissible to the extent of 1014.65 sq. mtr. and the high of the building was to be restricted to 8.50 sq. mtr. I say that the developers had constructed the building in the nature of Basement + Ground + 6 upper floors in violation of F.S.I. and DC Rules and more particularly in contravention of building permission.

4. I say that the builder/Developer has constructed Basement excess F.S.I, 890.25 sq. mtr. having 8 shops (extra) Commercial, (F.S.R. not permitted). I say that a per sanctioned plan builder developer was granted permission for

ground floor 2 4.50 sq.mtr. still area. Whereas Builder/Developer has constructed Ground floor excess F.S.I. 798.34 sq. mtr. having 26 shops commercial (extra). I say that as per sanctioned plan was for 8 flats total F.S.I. of 495.25 along with this 4 flats extra with excess F.S.I. 289.74 sq. mtr. have been constructed by the Builder Developer.

I say that there is no provision in the sanctioned plan as regards to Third floor, forth floor, fifth floor and sixth floor. Whereas the builder developer had constructed 12 flats each in every floor with excess F.S.I. 784.99 sq. mtr. means total 48 flats and F.S.I. 3139.96 sq. mtr.

I say that the Builder/Developer had constructed excess area totally admeasuring 5498.63 sq. mtr. and also increased the height of the building by 12 mtr. so at present height of the whole building is 20.50 mtr...."

18. It is to be noted here that even in the Affidavit dated 23rd February 2005 filed in this Court by the Appellant No. 5, it is not disputed that the construction of the building has been completed and that the flats are occupied by the flat purchasers. It is stated in the said Affidavit that a period of 16 years has passed from the completion of the construction of the building. It is not disputed that the flats in the building have been sold and profit has been earned. In fact the Appellants have volunteered to cooperate with he flat purchasers for getting the building regularized. There is no challenge in this Appeal from Order to the fact that after the order of injunction was passed construction of the building has been completed, Affidavit filed on behalf of Respondent No. 8-Corporation discloses that the construction of the building of basement plus ground and six upper floors has been completed in gross violation of the rules relating to F.S.I. as well as in violation of the development plan. It is stated that in the original sanctioned plan provision was made only for eight flats having total F.S.I. of 495.25 sq. mtr. In the sanctioned plant there is no provision for construction of third and upper floors and for construction of 12 flats on each floor. It is stated that 48 flats have been constructed in violation of rules relating to F.S.I. The Affidavit notes that the substantial part of the building is completely unauthorised and that no occupation or completion certificate has been issued.

19. It is pertinent to refer to the observations made by the Appellate Court while granting temporary injunction on 29th October 1988. The said finding read thus :

"28. ...If injunction is not issued the respondents would proceed with the construction of buildings in question. They would ultimately hand over possession of concerned blocks to purchasers and purchasers would occupy them. Thereafter, it would be extremely difficult for the plaintiff-appellant to get status-quo ante restosed. The damage done to environment may not be undone at least for a lifetime during which the parties would be fighting through various courts. At this stage, the appellants have apparently established an arguable case against the order of the Trial Judge. If injunction is refused, the appeal itself may become infructous by completion of building in question and their

occupation by purchasers...."

20. Thus the submissions made by the learned Counsel appearing for the Appellants will have to be appreciated in the light of the fact that after order of injunction was passed, substantial construction work was carried out and the construction of the building was completed. The injunction was not only to restrain the Appellants from carrying out construction but to restrain them from creating third party interests. In the Application at Exh. 74, the Respondent No. 1 has given several dates on which the agreements were executed by the Appellants for sale of the flats in favour of the third parties. The said averments are made in paragraph No 6 of the Application at Exh.74. If the reply of the Appellants to the application is perused it is apparent that they have not specifically denied that the agreements were entered into by them on the dates specified in the application at Exh. 74. Thus, whether there is wilful disobedience or not, the fact remains that the construction of the building was completed by constructing at least 48 flats and the construction to that extent is completely unauthorised. The purchasers are put in possession of the flats obviously long after the order of temporary injunction was passed. As and when the action of demolition will take place, the real sufferers will be the flat purchasers who must have invested their life earnings for acquiring their respective flats. That is the reason why I have directed the Appellants to file Affidavit setting out the particulars of the consideration received by them from the flat purchasers. By the said Affidavit the Appellants have pleaded that they are unable to give the details due to lapse of time. As the sufferers will be flat purchasers, I made a query to the Counsel appearing for the Appellants as to whether the Appellants are in position to compensate 48 flat purchasers in the event of demolition. The answer to the said query given by Shri Godbole, learned Counsel appearing for the Appellants is that without prejudice to the rights and contentions of the Appellants, they are willing to deposit substantial amount of Rest. 5,00,000/-. He submitted that subject to deposit of the said amount an order of remand may be passed to enable the Appellants to have opportunity to contest the Application at Exh. 74. Shri Godbole submitted that the Appellants are ready to deposit Rs. 5,00,000/- by separate demand drafts with the Registrar General of this Court.

21. The Affidavit dated 2nd November 1988 filed by the Appellants, the reply filed by the Appellants to the Application at Exh. 74 and the Affidavit filed in this Court on 23rd February 2005 clearly establish that the construction of the building was continued after order of injunction was passed and was completed. It is also clear that the Appellants have executed various agreements for sale in respect of the flats in the building after passing the said order of injunction restraining the Appellants from creating third party interests. The flat purchasers have been put in possession without obtaining occupation or completion certificate. The construction of at least 48 flats is unauthorised and in fact the Appellants have stated in an Affidavit filed in this Court that they are willing to cooperate with the flat purchaser for getting the building regularised.

22. It will be necessary to refer to the provisions of Order XXXIX Rule 2(A) of the Code of Civil Procedure, 1908 which read thus- :

2-A Consequence of disobedience or breach of injunction -

(1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

The said statutory provision provides for taking action for disobedience of the order of injunction. Apart from attachment of property, the person guilty of disobedience can be ordered to be detained in civil prison. The submission of Shri Godbole is that when such penal provision was to be applied, it was necessary for the Court to give an opportunity to the Appellants of being heard before recording a finding that a wilful breach was committed by the Appellants. Shri Godbole submitted that after transfer of the Appeal to the newly created Court, notice ought to have been served on the Appellant.

23. Shri Apte, learned Counsel appearing for the Respondent Nos. 1 to 6 tried to contend that even after transfer of the Appeal to the Court at Kalyan, the learned Advocates representing the Appellants in the Court at Thane continued to attend the Court at Kalyan and therefore the default is on the part of the Appellants. I find that notwithstanding this fact, a notice was ordered to be issued for intimating the Appellants about the transfer of the proceedings. The Roznama of the proceedings of the Appeal and the report of the bailiff, annexed to the Memorandum of Appeal shows that notice was not served on the Appellants. It is no doubt true that under Rule 14-A of Order VI of the said Code, it was for the Appellants to inform the Appellate Court about the change of their address for service,, The said procedure is not followed by the Appellants by placing on record their changed address. This is a lapse on the part of the Appellants. The drastic action of detention in civil prison of the Appellants was ordered after transfer of the Appeal from the District Court at Thane to the newly established Court of the Additional District Judge at Kalyan. After transfer of the matter an order was passed on 11th October 2004 by the Appellate Court directing the Respondent No. 8-Corporation to place on record the factual position with reference to the various details set out in the said order. An Affidavit was filed by the Deputy Commissioner of the Respondent No. 8-Corporation in compliance

with the said order. restricted to 8.50 sq. mtr. I say Appellants to the Application at Exh. 74 before the transfer of the matter, further material in the form of Affidavit of the Deputy Commissioner of the Respondent No. 8-Corporation filed in October 2004 has been relied upon in the impugned Judgment and order. A notice was not served on the Appellants after the transfer of Appeal to the Court at Kalyan. Considering the situation which the Appellants are facing, without prejudice to their rights and contentions they have shown their willingness to deposit a sum of Rs. 5,00,000/-. The Appellants have not been heard before passing drastic order of detention in civil prison. Therefore, in my view, the Appellants deserve an opportunity to be granted of being heard by passing an order of remand. As stated earlier, in so far as the breach of order of temporary injunction is concerned, the same is already established. The remand will be for limited purpose of considering the contention of the Appellants that the breach was not deliberate or wilful. After the remand the Appellants will be entitled to deal with the Affidavit of the Deputy Commissioner of the Respondent No. 8-Corporation and to lead evidence either oral or in the form of Affidavits as may be decided by the Appellate Court.

24. By the impugned order, a direction has been given to the Respondent No. 8 - Corporation to take action of demolition of the building. The said order was passed obviously on the basis of the Affidavit filed by the Deputy Commissioner of Respondent No. 8 setting out the gross violation of building Rules. There was no such prayer in the application at Exh. 74. Therefore, in my view, such a drastic direction while deciding the application at Exh. 74 could not have been given. That is the reason why I am inclined to set aside the said direction. It is made clear that even though the said direction is set aside, it will not prevent the respondent No. 8 from discharging its statutory duty and obligation as regards taking action against an illegal construction made in violation of the rules.

25. The Appellate Court passed an order of attachment of the property of the Appellants. Though I am passing the order of remand the said order of attachment will have to be continued till the order is passed after remand.

26. AS stated earlier, the distressing feature of this matter cannot be over looked By giving detailed reasons, the Appellate Court passed the order of temporary injunction. The order of injunction precisely noted the mischief which was sought to be prevented by granting injunction. The Appellate Court noted that if injunction was not granted the builder will sell the flats after completing the construction and. the purchasers will be put in possession and in such an event it will be impossible for the Plaintiffs to get status--quo ante restored. The Appellants have defeated and frustrated the very object of granting temporary injunction by their high handed conduct.

27. Hence, I pass the following order :

a) The statement made by Shri Godbole on instructions of the Appellants that a sum of Rs. 5,00,000/- will be deposited in this Court by four demand drafts is

accepted. Accordingly, the Appellants will deposit a sum of Rs. 5, 00, 000/- within a period of three days from today with -the Registrar General of this Court. After the Demand Drafts are encashed, the Registrar General of this Court will transfer the said amount to the Court of the Additional District Judge, Kalyan. After the transfer of the said amount from this Court, the Additional District Judge, Kalyan shall invest the same in Fixed Deposit in any Nationalised Bank initially for a period of six months. He will keep the amount invested in fixed deposit till the disposal of the Application at Exh. 74.

b) It is made clear that deposit of the said amount by the Appellants is without prejudice to their rights and contentions in the pending Appeal and pending suit.

c) The impugned order dated 17th January 2005 is quashed and set aside and the Application at Exh. 74 is remanded to the lower Appellate Court. The Appellate Court will decide the Application at Exh. 74 afresh in the light of the observations made in this Judgement. The remand will be restricted as laid down in this Judgment.

d) The parties will appear before the learned 3rd Ad hoc Additional District Judge, Kalyan on 4th April 2005 at 11.00 a.m. for fixing the schedule of hearing of application Exh. 74. It will be open for the Appellants to lead evidence either oral or by Affidavits as may be decided by the Appellate Court. It will be open for the Appellants to file additional reply to the Application at Exh. 74 for dealing with the events which have taken place after filing of the reply in the year 1991. It will be also open to the Respondent Nos. 1 to 6 to lead evidence and place further material on record.

e) Application at Exh. 74 shall be heard and decided by the Additional District Judge, Kalyan as expeditiously as possible and in any event on or before 30th September 2005. While disposing of the Application at Exh. 74, the Appellate Court will pass an appropriate order as regards disbursement and/or investment and/or refund of a sum of Rs. 5,00,000/- deposited by the Appellant. Till the disposal of the Application, the order of attachment passed by the impugned order will continue to operate as interim order subject to final order which may be passed on application at Exh. 74. It is clarified that the action which may be taken by the Respondent No. 8 against the offending structure will be strictly in accordance with law.

f) The Appeal is partly allowed in above terms subject to the condition that the Appellants will pay costs of Rs. 7500/- to the Respondent No. 1 and costs of Rs. 7500/- to the Respondent No. 8 within a period of four weeks from today.

g) Parties and the concerned court to act, upon an authenticated copy of this order.

i) The office will act upon an authenticated copy of operative part of this order for accepting the amount of Rs. 5,00,000/-