

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 646 OF 2014****IN****NOTICE OF MOTION NO. 3304 OF 2013****AND****NOTICE OF MOTION NO. 655 OF 2012****IN****BCCC SUIT NO. 2862 OF 2012****ALONGWITH****CIVIL APPLICATION NO. 783 OF 2014****IN****APPEAL FROM ORDER NO. 646 OF 2014****IN****NOTICE OF MOTION NO. 3304 OF 2013****AND****NOTICE OF MOTION NO. 655 OF 2012****IN****BCCC SUIT NO. 2862 OF 2012****Vatsalya 'B' Co-operative Housing Society Ltd. Appellants****VERSUS****Smt.Tahera Ali Athar Khan & Anr. Respondents**

Mr.Shabbir Kapadia, i/b. Mr.Robin Fernandes for the Appellants.

Mr.V.R.Tripathi, i/b. Mr.Pravin Sawant for Respondent Nos. 1 and 2.

CORAM : R.D. DHANUKA, J.**DATED : 30th NOVEMBER, 2015****P.C.**

Learned counsel for the appellants states that though there is a reference to an order passed by the learned trial judge in Notice of Motion No.655 of 2013 in the Memorandum of Appeal, the appellants does not press any such order passed in Notice of Motion No.655 of 2013 and the present appeal is restricted to an order

passed in Notice of Motion No.3304 of 2013 only. Statement is accepted. In view of the statement made by the learned counsel for the appellants as recorded aforesaid, the preliminary objections raised by the learned counsel for the respondents about the maintainability of this appeal from order against two orders in the same appeal does not survive.

2. Learned counsel appearing for the appellant society agrees to furnish a copy of the statement of the alleged dues of the respondent nos.1 and 2 in respect of the structures occupied by them within one week from today to the learned advocate representing the respondent nos. 1 and 2.

3. It is the case of the respondent nos. 1 and 2 that since they are not made members by the appellant society, respondent nos. 1 and 2 are not liable to make any payment of the society outgoings. Learned counsel for the respondent nos. 1 and 2 submits that insofar as Municipal taxes in respect of the structures occupied by them is concerned, respondent nos. 1 and 2 have been paying such municipal taxes directly to the Municipal Corporation. Learned counsel appearing for respondent nos. 1 and 2 states that upon receipt of the statement from the society as directed aforesaid, respondent nos. 1 and 2 will without prejudice to their rights and contentions pay the society outgoings including all arrears within four weeks from the date of receipt of such statement. It is made clear that the appellant society shall give a break up of the arrears of outgoings as well as arrears of the municipal taxes separately to the respondent nos. 1 and 2 through their learned advocate.

4. Insofar as interim relief in terms of prayer clause (a) of the notice of motion is concerned, learned counsel appearing for the respondent nos. 1 and 2 states that

in view of the status quo order already passed by the learned trial court in the suit filed by the respondent nos. 1 and 2, respondent nos. 1 and 2 cannot create any third party rights in respect of the structures in their possession. He submits that in view of the said status quo order, no separate order of injunction is required to be passed. In view of the statement made by the learned counsel appearing for the respondent nos. 1 and 2, in view of the status quo order passed by the learned trial court that his client will not create any third party rights, no separate order of injunction is necessary. Statement is accepted. Trial court shall make an endeavor to dispose of the suit expeditiously if both the parties co-operate with each other and with the learned trial Judge.

5. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of the disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]