

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

rpa

**CIVIL APPLICATION NO.4298 OF 2012
IN
FIRST APPEAL NO.1306 OF 2012**

Nandlal Jumani

.. Applicant

Vs.

Rahul Panjabi

.. Respondent

....
Mr.Jayesh Ramesh Vyas, Advocate for the Applicant.

Mr.G.S. Hegde a/w. Mr.C.M. Lokesh i/b. M/s.G.S. Hegde & Associates, Advocate for the Respondent.

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**CORAM : A.S. OKA &
A.P. BHANGALE, JJ.**

DATED : APRIL 10, 2015.

P.C. :

Heard the learned counsel appearing for the applicant and the learned counsel appearing for the respondent. Applicant is the defendant-appellant and the respondent is the plaintiff who is the respondent in the Appeal. Respondent filed a suit for specific performance of an agreement for sale of suit plot of land, which is more particularly described in paragraph no.2 of the impugned judgment. There is a decree for specific performance passed in the said suit which is the subject matter of challenge in the Appeal preferred by the present applicant. On his application, the operation of the decree for specific performance and other

consequential directions have been stayed till the disposal of the Appeal. It is not in dispute that the balance consideration of Rs.72,20,975/- has been deposited by the respondent plaintiff with the trial Court.

2 By this Civil Application, the applicant defendant who has challenged the impugned decree is seeking permission of the Court to complete the incomplete construction on the suit plot. This relief is sought on the basis of a bill raised by the Sindh Co-operative Housing Society limited seeking “non-construction charges” at the rate of Rs.20,000/- per month from 1st April, 2012 to 31st March, 2013. The learned counsel appearing for the applicant defendant submits that the applicant is not in a position to pay “non-construction charges” and, therefore, he may be permitted to construct the house without prejudice to the rights and contentions of the parties and without claiming any equity. When we made a query to the learned counsel representing for the respondent plaintiff as to whether the respondent plaintiff is ready and willing to pay the non-construction charges claimed by the society without prejudice to his rights and contentions, he states on instructions that the respondent is not in a position to pay the said amount and in any event, he is not liable to pay the said charges.

3 The applicant has already suffered a decree for specific performance. The respondent plaintiff has deposited the entire balance consideration. The applicant continues to be in possession as the decree for possession and specific performance has been stayed by this Court. Considering these facts, permission cannot be granted to the applicant to change the nature of the suit plot by constructing a bungalow or a house thereon.

4 Only because the society has claimed non-construction charges, the applicant cannot permitted to commence the construction and complete the same during the pendency of the Appeal.

5 Both the applicant and respondent are not ready and willing to pay “non-construction charges” claimed by the society. Therefore, it is for the society to take appropriate action. However, the society will have to be informed about the pendency of this Appeal and the interim order passed in this Appeal.

6 Accordingly, the application is rejected.

7 We direct both the applicant and respondent to forward an authenticated copy of this order as well as the authenticated copy of the interim order passed in the Appeal to the Sindh Co-operative Housing Society Limited.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)