

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.85 OF 2015**

IN

NOTICE OF MOTION (L) NO.2886 OF 2014

IN

SUIT (L) NO.957 OF 2014

WITH

NOTICE OF MOTION (L) NO.257 OF 2015

IN

APPEAL (L) NO.85 OF 2015

IN

NOTICE OF MOTION (L) NO.2886 OF 2014

IN

SUIT (L) NO.957 OF 2014

Sayed Mustafa Ali Mazhar Zaidi & Ors. Appellants.

V/s

Siffins Apartment Co-operative
Housing Society Limited & Ors. Respondents

Ms. Archana Khan alongwith Mr. Rehan S. Chhapra for the
Appellants.

Mr. S.U. Kamdar, Senior Counsel alongwith Mr. Tushar Gujar
i/b Solicis Lex for Respondent No.1.

Mr. Ashish Kamat i/b Kartik Tiwari for Respondent No.5.

**CORAM: V. M. KANADE &
A.R. JOSHI, JJ.**

DATE: 30th April, 2015

P.C.:-

1. Heard the learned Counsel for the Appellant.
2. Appellants are the original Plaintiffs and they are aggrieved by the order passed by the learned Single Judge dated 22/12/2014 in Notice of Motion (L) No.2886 of 2014. By the said order, the learned Single Judge was pleased to reject the application for ad-interim relief. Against the said order, this appeal has been filed. Notice of Motion is still pending.
3. Appellants/original Plaintiffs claim right over FSI which has been made available, after construction of the building and after the Society was registered on the basis of Clause 11 of the Agreement which was entered into between the Appellants and the members of the Society. The said Clause 11 reads as under:-

“11. It is agreed by the party of the Second Part that in the event extra F.S.I. Is granted by the Municipal Corporation of Greater Bombay in respect of this property even after the property is conveyed to a co-operative Housing Society in terms of

this agreement, the same shall belong to the party of the First Part who will be entitled to utilise the same by constructing additional flats. The party of the First Part shall be at liberty to sell these flats in such a manner as they may be advised. The party of the First Part shall offer the society the option of buying over the said F.S.I in case the party of the First Part, does not wish to utilise it by themselves.”

4. It is submitted that though the provisions of MOFA came into operation after the Agreement was executed, since the members of the Society had prior knowledge about the said condition, they are estopped from denying the right which was given to the Appellants.

5. In our view, firstly, the appeal has been filed against refusal to grant ad-interim relief and, therefore, on that very ground, we are not inclined to entertain this appeal under Clause 15 of the Letters Patent. Secondly, it is well settled that after the Society has been registered and since deemed conveyance has now been ordered by the competent authority, any right as envisaged under Clause 11 of the said Agreement would not be available to the Plaintiffs. We are, therefore, not inclined to entertain this appeal.

6. For the aforesaid reasons, Appeal is dismissed. Interim order is vacated. The observations made by this Court while disposing of the appeal are of a prima facie nature. Hearing of the Notice of Motion is expedited.

7. Appeal is accordingly disposed of. Since Appeal has been disposed of, Notice of Motion does not survive and the same is also disposed of.

(A.R. JOSHI, J.)

(V.M. KANADE, J.)