

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

**APPEAL FROM ORDER NO.423 OF 2016
WITH
CIVIL APPLICATION NO.550 OF 2016**

Vivek Dattatraya Mhaskar : Appellant/Applicant
versus
Nimisha Nitin Mhaskar and ors. : Respondents.

Mr. V C Ghosalkar for the Appellant/Applicant.
Ms. Swati Gautam for the Respondent Nos.1 and 2.

CORAM : R. M. SAVANT, J.
DATE : 30th June 2016

P.C.

1 The order dated 25/01/2016 passed by the learned Judge of the City Civil Court, Greater Bombay is taken exception to by way of the above Appeal from Order. By the said order the Notice of Motion No.3198 of 2015 filed by the Appellant/Plaintiff was partly allowed to the extent of prayer clause (e) of the said Notice of Motion. However, the Trial Court directed the Defendant Nos.5 and 6 who are the developers to deposit the Corpus Fund along with interest at the rate of 12% p.a. from 03/05/2010 till the date of the said order.

2 The Plaintiff has aggrieved by the fact that the prayer clauses (a) to (c) have been rejected. In so far as prayer clauses (a), (b) and (c) are concerned, the reasons why the Trial Court has deemed it appropriate to reject the said prayers have been mentioned in the impugned order. In so far as

prayer clause (a) is concerned, the Trial Court has rejected the said prayer for appointment of Court Receiver in view of the fact that the flat in the re-developed building is yet to be allotted. In so far as prayer clauses (b) and (c) are concerned, the Trial Court has rejected the said prayers on the ground that the order relating to the payment of compensation to the Defendant No.1 by the Defendant Nos.5 and 6 is operating in favour of the Defendant No.1 since 03/05/2010 and that there were no change in the circumstances from the year 2010 for grant of prayer clauses (b) and (c) which prayers relate to the payment of compensation.

3 In so far as prayer clause (d) is concerned, pursuant to the last hearing, the learned counsel appearing on behalf of the Defendant No.1 has filed the affidavit of the Respondent Nos.1 and 2 in which affidavit it has been stated that the Respondent Nos.1 and 2 i.e. the Defendant Nos.1 and 2 have been handed over possession of permanent alternate accommodation being Flat No.401 in C wing admeasuring 606 sq.ft. carpet area comprising of one bedroom, one master bedroom, hall, kitchen and toilet bock in Dharendra CHS Ltd. on 18/03/2016 on the execution of indemnity bond in favour of the said Society. In view of the said statement made in the affidavit filed by the Respondent Nos.1 and 2 the relief sought vide prayer clause (d) has become infructuous. Hence it is not necessary to consider the relief sought vide prayer clause (d).

4 The learned counsel for the Respondent Nos.1 and 2 states that as yet the agreement in respect of the said flat has not been executed.

5 In so far as the prayer clauses (a), (b) and (c) are concerned, this Court does not find any justifiable reason to interfere with the order passed by the Trial Court rejecting the said prayers.

6 Hence there is no merit in the above Appeal from Order which is accordingly dismissed. However, it would be open for the Appellant to seek amendment in the plaint so as to incorporate the averments relating to prayer clauses (b) and (c) and claim the reliefs on the said basis. Needless to state that if any such application for amendment is filed, the Trial Court would consider the same on its own merits and in accordance with law uninfluenced by the impugned order or the instant order. In view of the dismissal of the above Appeal from Order, Civil Application No.550 of 2016 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]