

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

**APPEAL FROM ORDER NO.139 OF 2016
ALONGWITH
CIVIL APPLICATION NO.189 OF 2016**

Agarwal and Associates Builders & Developers

and another

.. Appellants

Versus

Sai Sadan Co-op. Hsg. Soc. Ltd. and another

.. Respondents

Mr. D. R. Singh a/w Mr. Sanjay Tiwari, Mr. S. K. Rai for the Appellants.

Mr. A. S. Khandeparkar for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 21st JUNE 2016

PC.

1. The above Appeal from Order takes exception to the order dated 18.01.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the Learned Judge has struck off the defence of the Appellants herein who are the original Defendant Nos.1 and 2 on account of the non-compliance of the order dated 07.08.2015 passed in Notice of Motion No.2347 of 2015. The non-compliance was as regards payment of arrears towards monthly rent to the members of the Plaintiff's society and rent of each month within the

time stipulated by the said order dated 07.08.2015. Since the order striking of defence is under Order XXXIX Rule 11 of the CPC, the Appellants herein have filed Notice of Motion being No.307 of 2016 for setting aside the said order in so far as it strikes of their defence. The second order impugned in the above Appeal is the order dated 22.01.2016 refusing ad-interim reliefs to the Appellants in the said Notice of Motion.

2. Be that as it may, since the said Notice of Motion being No.307 of 2016 is presently under consideration of the Trial Court i.e. the Learned Judge of the City Civil Court and has been kept on 23.06.2016, it is not necessary for this Court to interdict with both the orders i.e. 18.01.2016 as also the order dated 22.01.2016. It seems that before the Trial Court, the Defendant Nos.1 and 2 have shown their inclination to comply with the order dated 18.01.2016 in the matter of payment of arrears of each month and it is precisely for ascertaining the amount due from the Defendant Nos.1 and 2 that the matter is kept on 23.06.2016. Since the Trial Court is seized with the application for setting aside the said order dated 18.01.2016, this Court does not deem it appropriate to entertain the above Appeal from Order. The above Appeal from Order is accordingly disposed of. The Trial Court is directed to hear and decide the said Notice of Motion being No.307 of 2016 expeditiously.

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3. In view of the disposal of the Appeal from Order, the Civil Application does not survive and to accordingly disposed of as such.

[R.M. SAVANT, J]