

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

***APPEAL FROM ORDER NO. 234 OF 2016
WITH
CIVIL APPLICATION NO. 311 OF 2016***

Mrs.Chandanbala Sureshchandra Gandhi ... Appellant/Applicant

v/s

Mukundrai Dwarkadas Gandhi & ors. ... Respondents

Ms.Mamta Sadh i/by Z.H.Zaidy for the appellant/applicant.

Mr.Zoeb Cutterywala i/by ALMT Legal for Respondent no.1.

Mr.Ramgopal Tripathi for Respondent No.2.

CORAM: N.M. JAMDAR, J.

DATED : 5 APRIL 2016

P.C.:

Admit. Taken up for final disposal by consent of parties.

2 Learned counsel for the parties, after taking instructions, for which the matter was adjourned from time to time, state that the appeal can be disposed of by the following directions and no reasons in support thereof be given since the suit is still pending.

3 Accordingly, the following order is passed :

O R D E R

(a) The order passed on 15 February 2016 in Notice of Motion No.3393 of 2015, is quashed and set aside.

(b) The order dated 3 August 2015 in Notice of Motion No.1383 of 2013, stands modified as under, as and by way of interim arrangement.

(i) The Appellant/Ori. Defendant No.1 is permitted to let the suit flat Nos.A-5 and A-6 on the 1st floor of the Indralok Co-op. Housing Society Ltd., situated at 90 feet Road, Ghatkopar (E), Mumbai – 400 077 on leave and licence basis without creating any permanent rights in any manner therein.

(ii) The Appellant/Orig. Defendant No.1 is hereby directed to deposit every month in Court 1/3 amount, out of the monthly licence fee/compensation as and when receivable in respect of each flat if given on leave and licence, being flat Nos.A-5 and A-6 from the date of commencement of the licence agreement till the Licence period has expired. This is without prejudice to the rights and contentions of the Appellant – original 1st Defendant in the suit. The monthly amount is to be deposited in Court on or before 10th day of each succeeding month.

(iii) It is made clear that the licence fee/compensation to be deposited in Court shall be subject to accounts, namely, maintenance and outgoing charges towards each flat

payable to the society and other charges that may be levied, demanded and paid to the society in respect of each flat by the Appellant.

4 Learned counsel for Respondent No.1 states that Respondent No.1 will not know whether the amount of licence fee so fixed is fair or otherwise and therefore an opportunity be given to Respondent No.1 in case the licence fee so fixed by the Appellant is at substantial variance with the licence fee fixed earlier. It is clarified that earlier the licence fee shall be taken as a benchmark. The Appellant states that, earlier the licencees should have paid licence fee by way of cheque and the same arrangement will continue.

5 Liberty to the parties to make an application for early disposal of the suit, which will be considered by the Court as per its time schedule.

6 All contentions of the parties in the suit on merits are kept open.

7 The appeal is accordingly disposed of in terms of above.

8 In view of disposal of the appeal, the civil application is disposed of.

(N. M. JAMDAR, J.)