

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 522 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 663 OF 2015****IN****APPEAL FROM ORDER NO. 522 OF 2015****M/s.Samyak Holdings Pvt. Ltd.****..... Appellant****VERSUS****Ashok Atmaram Deshmukh & Ors.****..... Respondents**

Mr.H.Toor, a/w. Mr.S.B.Pawar, Ms.Nikita Jacot, i/b. S.K.Legal Associates for the Appellant.

Mr.Ashok Mishra, i/b. Mr.Ravi Jadhav for Respondent No.1.

Mr.A.V.Diwate for RESpondent No.5/B.M.C.

Mr.Rajan Pawar, a/w. Ms.Poonam Bhosale, A.G.P. for Respondent Nos. 2 and 3.

CORAM : R.D. DHANUKA, J.**DATED : 11th FEBRUARY, 2016****P.C.**

Learned counsel appearing for the appellant and respondent no.1 who is contesting party have agreed to the following order :-

(a) By consent of the appellant and the respondent no.1, the impugned order dated 10th February,2015 passed by the learned trial judge is set aside.

(b) The application filed by the appellant under Order 7 Rule 11 of the Code of Civil Procedure is restored to the file for hearing denovo.

(c) The respondent no.1(original plaintiff) is permitted to apply for amendment of the plaint. It is made clear that the application for amendment of the plaint if any filed within two weeks from today, shall be heard by the learned trial judge first and an appropriate order shall be passed thereon. If the learned trial judge allows the amendment in favour of the plaintiff, the learned trial judge may accordingly pass an appropriate order in the application filed by the appellant under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

(d) All the contentions of both the parties are kept open.

(e) It is made clear that till such application for amendment of the plaint is heard by the learned trial judge, the learned trial judge shall not proceed with recording of evidence in the suit. If any such application for amendment is made by the plaintiff, the said application shall be disposed of by the learned trial judge within eight weeks from the date of filing such application.

(e) The appellant shall file affidavit in reply to the said application within two weeks from the date of service of the application.

(f) Learned counsel appearing for the respondent no.1 on instruction states that his claim in the plaint would be restricted to the room nos. 12 and 14 as stated in paragraph 1

of the plaint and the amendment proposed to be made by the respondent no.1 would be in respect of those two rooms only.

Statement is accepted.

2. Appeal from order is disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]