

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

**CIVIL APPLICATION NO.2237 OF 2015
IN
FIRST APPEAL STAMP NO.16212 OF 2015**

**M/s. Patidar Co-op HSG Soc. Ltd. : Applicant.
Versus
Mukesh Shashikant Patel and anr. : Respondents.**

**Mr. S C Patel for the Applicant.
None for the Respondents.**

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

P.C.

1 The above Civil Application has been filed by the Applicant seeking leave to appeal against the judgment and order dated 15/04/2009 passed in Short Cause Suit No.1374 of 2008. The leave to appeal is sought on the ground that the decree passed in the said suit prejudicially affects the rights of the Applicant/Appellant which is a cooperative housing society. It is the case of the Applicant/Plaintiff that the said decree has been obtained by collusion as neither the Plaintiff nor the Defendants was in possession of the suit property as it is the Applicant who is in possession having 3 buildings thereon. It is also the case of the Applicant that the Plaintiff and the Defendants in the said suit have suppressed from the Trial Court various orders passed by this Court in Suit No.1933 of 1996 as a consequence of which the property was conveyed to the Applicant. It is the case of the Applicant that pursuant to the said

conveyance the buildings were constructed and flats were sold to various purchasers who have constituted themselves into the Applicant Society. It is the case of the Applicant that the decree has been obtained without the Applicant/Appellant being a party the suit.

2 None appears for the Respondents though served.

3 In my view, having regard to the aforesaid case of the Applicant/Appellant the above Civil Application is required to be allowed and is accordingly allowed in terms of prayer clause 8(a).

4 The Applicant/Appellant also prays for continuation of the ad-interim relief by way of prayer clause (c) of the above Civil Application which is in operation. The said ad-interim relief is accordingly continued, till the above Civil Application No.2237 of 2015 is decided. The said prayer clause (c) reads thus :-

(c) That this Hon'ble Court stays the execution and operation of the judgment and decree dated 15.04.2009 passed by the Honorable Bombay City Civil Court at Dindoshi, His Honour Judge Shri ("Learned trial Judge") in the Suit No.1374 of 2008 during the pendency of the above Appeal."

5 The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]