

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

**CIVIL APPLICATION NO. 3958 OF 2011  
IN  
FIRST APPEAL NO. 980 OF 2012**

|                                           |            |                |
|-------------------------------------------|------------|----------------|
| Shah Builders                             | <b>vs.</b> | ... Applicant  |
| Devki Aashirwad Co-operative Housing Ltd. |            | ... Respondent |

Mr. B. R. Zaveri, Advocate for the applicant.  
Mr. R. R. Nagda, Advocate for the respondent.

**Coram** : Smt. R. P. SondurBaldota, J.  
**Date** : 15<sup>th</sup> April, 2016.

**P.C.**

1. This civil application seeks stay of the judgment and decree impugned in the first appeal filed by the applicant. The first appeal was admitted on 3<sup>rd</sup> September, 2012. Mr. Zaveri, the learned advocate for the applicant states that since then till date order directing the parties to maintain status-quo has been in operation.

2. Mr. Nagda, the learned advocate for the respondent, the original plaintiff submits that the applicant should be directed to comply with para 1 of the operative part of the impugned decree

and execute conveyance in favour of the respondent. As regards paras 2, 3 and 4 he submits that the directions contained therein have become redundant. About the directions of para 5 he submits that the respondent has already filed proceedings in the Consumer Forum. Therefore this direction is also not required to be complied with. Para 6 of the operative part directs the applicant to vacate the shop no.7 and hand over it's possession to the respondent.

3. The dispute in the suit arose with the allegation that the application had changed the building plans sanctioned by the Mumbai Municipal Corporation while constructing the building. It is specifically alleged that what was shown as a meter room in the sanctioned plan has been converted into shop no.7. If this is the dispute between the parties, there cannot be any direction to the applicant to convey the property in accordance with the building plans sanctioned earlier by Mumbai Municipal Corporation without giving an opportunity to the applicant of it's appeal being heard on merit. Therefore, the civil application is allowed in terms of prayer clause (a).

**[Smt. R. P. SondurBaldota, J.]**