

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.194 OF 2015

Shanti Co.operative Housing Society Ltd	 Appellant.
V/s.	
Chandrakant J Dalal and ors	 Respondents

Mr. Deepak Shukla, I/by M/s Vinod Mistry Co. for the Appellant.
Mr. Niranjana A. Mogre, for the Respondent No.5.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22ND AUGUST, 2016.

P.C. :

1. Heard learned counsel for both parties.
2. In this appeal, an exception is taken to the order dated 20th August, 2014, passed by the City Civil Court, Greater Mumbai, in Suit No.818 of 2012.
3. As the point involved in this appeal is very short one, with the consent of learned counsel for appellant and respondent No.5, it is heard finally at the stage of admission itself,
4. It is submitted that after the suit was filed, the parties arrived at mutual understanding and accordingly consent terms were filed before the trial Court and the trial Court has disposed of the suit, in terms of the consent terms on 11th August, 2014, taking the consent terms on record

after verifying the contents thereof and those contents being admitted by the appellant and respondent No.5. As per the said consent terms, the suit against original defendant Nos 1 to 4 was withdrawn and hence the suit was disposed of; whereas suit in respect of appellant and respondent No.5 suit was decreed in terms of consent terms Exh.3 with no order as to costs.

5. Subsequent to passing of this order and disposal of the suit, another application came to be filed for modification in some clauses of original consent terms dated 11.8.2014. The trial Court, however, vide its order dated 20th August, 2014, rejected the said application on the ground that once the suit is disposed of in terms of consent terms, the Court cannot modify the consent terms.

6. I have perused the modifications sought in the clause of consent terms which are of formal nature. It is submitted that in clause No.2 of the consent terms, reference of clause No.6 is wrongly made and it should be read as clause No.7. Similarly, in respect of contents of clause No.7 of the consent terms, it is submitted that due to oversight, three lines remained to be typed/written in respect of matching amount of sinking fund.

7. Considering the fact that both the appellant and respondent No.5 are ad-idem in respect of modifications sought in the consent terms and the said modifications being formal in nature, to correct the error

which had occurred due to oversight in the original consent terms, whatever modification is sought in the consent terms needs to be allowed.

8. In view thereof appeal is allowed.

9. The decree be drawn in terms of modified consent terms produced at page No.123 read with the original consent terms.

10. In the facts of the case, no order as to costs.

[DR. SHALINI PHANSALKAR-JOSHI, J.]