

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4688 OF 2016
in
FIRST APPEAL (Stamp) No.31567 of 2016

Ashok Champalal Khimavat Applicant
vs
Bhakti 'A' Apartments Co-op Hsg.Scty Ltd & anr..Respondents

Mr.Nikhil S.Rajeshirke for Applicant
Mr.J.G.Damani for Respondents

CORAM: G.S.KULKARNI, J
DATE: 7 DECEMBER 2016

P.C.

1. Heard learned counsel for the parties.
2. By this Civil Application, the applicant-defendant no.1 seeks stay of the implementation and execution of the judgment and decree dated 13.10.2016 passed by the City Civil Court at Mumbai, Borivali Division, Dindoshi, in Suit No.521 of 2015.
3. I have heard learned counsel for the parties on these prayers.
4. A perusal of the impugned Judgment and order shows that the applicant is claiming rights in respect of a parking in the respondent no.1/plaintiff-society. The right being claimed was on the basis of an allotment letter dated 1.9.2003 which was issued by the Developer/Respondent no.1. Admittedly, the applicant is not a

member of the plaintiff-society and parking space which are available with the plaintiff-society are required to be used and enjoyed by members of the respondent no.1-Plaintiff society. What is glaring is that the defence which was urged on behalf of the appellant in asserting his rights in respect of the suit parking namely parking no.25A on the basis of an allotment letter dated 1.9.2003 came to be disbelieved on the appellant's own deposition in which the appellant has categorically stated as under :

“On the basis of resolution of society, builder (defendant no.2) had issued letter to me. Now my letter (Exhibit 3) shown to me. Except allotment letter, I do not have other document to show the allotment of car parking No.25 (A) to me. I know that defendant no.2 had issued the list of allottees having their compartment and car parking. Now the list below Exhibit 16 which is filed by plaintiff shown to me. There is no averment about my name. “

5. The learned trial Judge has observed that the above deposition clearly falsifies the case of the applicant inasmuch as in 2003 when the allotment letter Exhibit 30 came to be issued, the society was not formed. Thus, the resolution of the society could have been in existence, at the time of issuance of the allotment letter which also show that the allotment letter is a back dated letter. The learned trial Judge has appropriately noted the falsity of the case of the applicant in asserting his rights in respect of the suit parking. Further, the resolution on the basis of which the applicant would urge that he would be entitled to use the suit car parking also does

not support the case of the applicant in as much as the resolution appears to be a General resolution of the year 2006. The resolution also does not note the allotment letter which is Exhibit 30 which was relied upon by the applicant.

6. The learned trial Judge has rightly concluded that it would be absurd to accept a situation that a third party i.e. a person who is not member of the respondent no.1-plaintiff society is permitted to use car parking to which members of the respondent no.1-plaintiff society would become entitled to use.

7. In the above facts, I do not find that this is a fit case where any discretionary relief of stay to the impugned Judgment and order can be granted. Needless to observe that if the appellant succeeds in the appeal he would become entitled to use the suit parking. Accordingly, Civil Application does not call for any interference and is rejected. No costs.

{G.S.KULKARNI, J}

Rng

4

c.a.damania

Rng

5

c.a.damania