

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 509 OF 2015
IN
NOTICE OF MOTION NO. 535 OF 2015
IN
SUIT NO. 43 OF 2015
WITH
NOTICE OF MOTION NO. 1989 OF 2016
IN
APPEAL NO. 509 OF 2015**

Mr. Clifford John Menezes & Ors. .. Appellants
versus
Romell Properties Pvt. Ltd. & Ors. .. Respondents

Mr. Deepak Tralshalwala i/b. V. S. Hadade for Appellants.
Mr. G. S. Godbole with Mr. M. D'Mello and Shaun Pinto for Respondents.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 22 SEPTEMBER 2016

P.C.:

1] The entire dispute between the parties now raised in the appeal seems to be with regard to 6th floor of the construction of the building. Apparently, in 2008 followed by 2009 and 2010, there were agreements to sell 6th floor / flat (admeasuring 18000 sq. ft. saleable interest) by the respondents in favour of the appellants who are five in numbers.

2] According to the respondents contention by virtue of several meetings conducted between the respondents and various plaintiffs there were some decisions with regard to the construction of the building etc. It is further contended that in the last meeting where two of the plaintiffs i.e. plaintiff no. 1 and one of the son (another plaintiff

along with the consultant) appeared and some proceedings took place and according to the appellants this is not binding on them, and according to the respondents the minutes not only binds the parties who appeared for the meeting but also other plaintiffs. The impugned order does make some reference to the fact whether saleable interest of the appellants should be restricted to 6th floor or 5th floor. Apparently, it also says ultimately the decision on merits in the suit would decide the controversial issues finally between the parties.

3] In the light of such observations, we are of the opinion that there is no need to keep the appeal pending for disposal on merits since learned counsel for the respondents undertakes to abide by the continuation of the interim order dated 11 July 2016. However, we make it clear that the observations made neither in the impugned order nor this order would have any persuasive value while disposing of the suit on merits.

4] So far as 6th floor is concerned, if the completion of the building is prior to the disposal of the suit and in case occupancy certificate is to be issued, the parties are at liberty to approach the trial court for seeking any interim relief.

5] Appeal is disposed of accordingly. In view of the disposal of the appeal, notice of motion does not survive and is disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)