

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 297 of 2016
IN
NOTICE OF MOTION NO. 2413 OF 2016
IN
SUIT NO. 921 OF 2015
WITH
NOTICE OF MOTION (L) NO. 2454 OF 2016**

Mrs. Hemali Parag Mehta and anr. .. Appellants

V/s.

M/s. Ayappa Construction Co. & ors. .. Respondents.

Mr. Simil Purohit a/w. Manish Doshi i/b M/s. Vimadalal & Co. for the Appellants.

Mr. V.S. Pandey i/b Ms S.U. Pandey for Respondent Nos.1 and 2.

Ms Jameela Damani for M/s. Green Narch Infratech Pvt. Ltd.

Dr. M.S. Deshpande, Court Receiver, High Court, Bombay present.

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

DATE : 8 DECEMBER 2016.

P.C.

1] Suit No. 921 of 2015 came to be disposed of in terms of the consent terms. Subsequently, Notice of Motion No. 2413 of 2016 came to be filed by the 3rd party before the Trial Court, i.e., Murali Cooperative Society Limited, contending that the terms of settlement which became the basis for disposal of the suit included the properties, which never belonged to the parties, i.e., in the form of development rights with regard to the property in question. Learned Single Judge by order dated 12th August 2016,

opined that the conduct of the plaintiffs and defendants inspires no confidence and *prima facie* there is sufficient reason to believe that the entire order (based on consent terms) was collusive. The learned Single Judge further observed that if at all the plaintiffs are aggrieved, then they have to blame themselves for persuading the Court to believe and act upon the terms of consent to which the plaintiffs were also party. Aggrieved by this, the present appeal is filed by the plaintiffs.

2] During the course of proceedings of this appeal, both the plaintiffs and the respondents came up with a suggestion that they would enter into modified terms of settlement excluding those properties, which were objected to be included in the earlier terms of settlement / consent terms. Learned counsel appearing for both the parties submitted that the properties to which objections are raised, they have excluded such properties which includes development rights of five societies and, therefore, with this modification being placed on record, they must be allowed to settle their differences based on the modified consent terms. If the parties have agreed upon certain consent terms by excluding certain clauses in the earlier consent terms after realising their mistake since it was brought to the notice by the 3rd party, so far as the observations that they colluded to get the consent terms approved by an order dated 28th October 2015 need not to remain on record. With these observations, we proceed to confirm the final order of setting aside the order dated 28th October 2015 by the order dated 12th August 2016, excluding the remarks which

relate to the conduct of the parties. Parties are at liberty to bring fresh terms of settlement/consent terms to the notice of learned Single Judge and the same shall be disposed of in accordance with procedure. Accordingly, the appeal is disposed of.

3] In view of the disposal of main appeal, notice of motion does not survive and the same is disposed of accordingly.

(CHIEF JUSTICE)

(M.S.SONAK, J.)