

BDPPS

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

**APPEAL NO.561 OF 2015
IN
NOTICE OF MOTION NO.629 OF 2015
IN
SUIT NO.314 OF 2015**

Mr. Mahendra Bhaskar Mhatre Appellant.

V/s

Udyam Kunj Co-operative
Housing Society Ltd. & Ors. Respondents

Mr. Vishwajeet Sawant i/b Mr. Sandeep Mandlik for the Appellant.
Ms. Shubhangi V. for Respondent No.1.
Mr. Bhavin Bhatiya for Respondent Nos. 2, 3(a) to 3(d), 4 and 5.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE: MARCH 1, 2016

P.C.:- (Per V.M. Kanade, J.)

1. Appellant who is the original Plaintiff is aggrieved by the impugned order dated 21/09/2015 passed by the learned Single Judge in Notice of Motion No.629 of 2015 and Notice of Motion (L) No.2260 of 2015. Notice of Motion No.629 of 2015 is taken out by the Appellant for appointment of Court Receiver and for other

consequential reliefs, whereas Notice of Motion (L) No.2260 of 2015 is taken out by Respondents/Defendant Nos. 2 to 5 for rejection of the plaint.

2. Grievance of the Appellant is that the learned Single Judge, by the impugned order, has directed the Appellant/Plaintiff to complete the construction within three months and obtain necessary Occupation Certificate and handover possession of one flat each to Defendant Nos. 2 to 3 and Defendant Nos. 4 and 5 and at the same time has kept both the Notices of Motion pending.

3. We have perused the impugned order. It appears that the learned Single Judge without deciding the Notices of Motion, as an interim arrangement, has directed the Appellant to complete the construction work and handover possession of one flat each to Defendant Nos. 2 to 5. In our view, this relief is neither claimed by the Plaintiff nor by the said Defendants. Appellant is therefore justified in submitting that Defendant Nos. 2 to 5 first have to execute tri-partite agreement and only thereafter possession of one flat each can be given to the said Defendants. Secondly, the Appellant is further justified in submitting that though the construction may be completed within three months, it was not possible to give a time frame within which the Occupation Certificate could be obtained.

4. We are of the view that there is some substance in the

submission made by the learned Counsel for the Appellant.

5. Hence, the impugned order is set aside. The learned Single Judge is directed to decide both the Notices of Motion viz Notice of Motion No.629 of 2015 and Notice of Motion (L) No.2260 of 2015 on merits and in accordance with law. The learned Single Judge shall not be influenced by the observations made by this Court or by the learned Single Judge who has passed the ad-interim order.

6. Appeal is accordingly disposed of.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)