

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER No. 213 OF 2017
WITH
CIVIL APPLICATION No. 289 OF 2017 in A.O. No. 213 OF 2017**

Antonio P. Fernandes & Anr. ... Appellants/Applicants
Vs.
Joe Podriques ... Respondent

Mr. Kishor Tembe i/b. Amol Kishor Tembe, Advocate for the appellants/applicants.
Mr. Hamid Ahmad, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **6th November, 2017.**

P.C.:

Admit. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal from Order is directed against the order dated 22nd February, 2017 passed by the learned Judge of the City Civil Court, Mumbai in S.C. Suit No. 416 of 2017 thereby rejecting any relief in respect of parking spaces to the plaintiffs by taking a view that it is a dispute between the Member and Cooperative Housing Society and hence it is barred under section 91 of the Maharashtra Cooperative Housing Societies Act.

3. The plaintiffs/appellants are the plot owners, who have constructed a building consisting of flats and sold the flats to other persons and retained four flats along with four parking spaces for himself. The other flat owners except the appellants formed a Cooperative Housing Society under the name and style of Casa Blanca Cooperative Housing Society Ltd. They claimed that the appellant is not entitled to keep the four parking spaces but only three parking spaces can be retained by him, as the Society claims that there is less parking spaces. So, they issued a letter on 13th August, 2016 to appellant/plaintiff informing him about the allotment of parking spaces and also about other grievances in respect of completion of unfinished work. Thus, the Society has grievance against the person who is not a member of the Society, however, the Society has other transactions.

4. In view of this, whether the suit falls under section 91 of the Maharashtra Cooperative Housing Society Act or not is to be decided as a preliminary issue by the learned Judge of the City Civil Court, Mumbai. The preliminary issue is to be framed and decided within six weeks from the date of receipt of this order. The parties to cooperate.

5. After hearing the submissions of learned counsel for both the parties, it appears that the Society has no grievance. The learned counsel for the respondent submitted that the Members of the Society do not want to disturb the possession, use, occupation and access of the appellant/plaintiff in his four flats and parking space nos. 8,9 and 10. This statement of the learned counsel for the respondent/Chairman of the Cooperative Society is accepted. It is to be noted that the Chairman of the Cooperative Society is prosecuted in his personal capacity and Society is not made the party/defendant. Under such circumstances, the dispute remains only in respect of parking space No. 6 which can be sorted out at the time of trial or before the Cooperative Court. The respondent/defendant shall not disturb the access, use, occupation and possession of four flats and parking space nos. 8, 9 and 10 of the appellant.

6. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)