

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 9426 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO. 9427 OF 2017

Mr. Devendra Dilipsingh Rawat .. Appellant
vs.
Oshiwara Tarapore Garden CHSL .. Respondent

WITH
APPEAL FROM ORDER (STAMP) NO. 9428 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO. 9429 OF 2017

Mr. Ramprakash Khetan .. Appellant
vs.
Oshiwara Tarapore Garden CHSL .. Respondent

WITH
APPEAL FROM ORDER (STAMP) NO. 9431 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO. 9432 OF 2017

Mr. Gurbaxsingh Sethi .. Appellant
vs.
Oshiwara Tarapore Garden CHSL .. Respondent

Mr. A. M. Saraogi for Appellants.
Mr. R. S. Ghadge for Respondent.

CORAM : M. S. SONAK, J.
DATE : 03 APRIL 2017

COMMON ORDER :

- 1] Upon production, taken on board.
- 2] Heard learned counsel for the parties.
- 3] With their consent and at their request, the appeals are taken up for final disposal at this stage itself.

4] The learned Trial Judge, has declined to grant ad interim relief to the appellants – plaintiffs to restrain the respondent – society from withdrawing the facility of car parking and/or causing any obstruction to the appellants for parking their vehicles in the compound of the society building.

5] The dispute, *inter alia* is with regard to payment of legal charges. In Appeal from Order (Stamp) No. 9426 of 2016, a demand notice has been placed on record, from which it is evident that a sum of Rs.38,806.30 paise has been demanded from the appellants. There are similar demand notices in the other appeals.

6] Mr. Saraogi, on basis of instructions from the appellants – plaintiffs states that the appellants, without prejudice to their rights and contentions, will deposit the amounts referred to in such notices before the learned Trial Judge within a period of ten days from today. This statement is accepted.

7] On the basis of the aforesaid statement, the appellants – plaintiffs are granted ad interim relief in terms of prayer clause (a) of the notices of motion.

8] Mr. Ghadge, learned counsel for the respondent submits that the suits itself are not maintainable, as according to him, this dispute is covered under section 91 of the Maharashtra Co-operative Housing Societies Act, 1960. He submits that he will file a reply / notices of motion, within a period of ten days from today raising preliminary objection to the maintainability of the suits and without prejudice, also opposing the motions for interim relief.

9] Learned trial Judge is requested to take up all such notices of

motion and dispose of the same on merits within a period of eight weeks from today.

10] It is made clear that if ultimately, the suits are dismissed on the ground of maintainability or if interim relief is declined to the appellants, the respondent society shall be entitled to withdraw the amounts deposited by the appellants in all these matters. However, it is made clear that such withdrawals shall again be without prejudice to all rights and contentions of the appellants to contend that such amounts were never due and payable and to seek for recovery of such amounts before the learned Trial Judge or any other appropriate forum.

11] In case the amounts are not deposited within a period of ten days from today, ad interim relief now granted shall stand vacated and these Appeals from Order shall be deemed to have been dismissed.

12] Mr. Saraogi requests the Court to record that all the appellants are present and that the order is made in their presence. It is so recorded.

13] The Appeals from Order are disposed of in the aforesaid terms. In view of disposal of the Appeals from Order, the Civil Applications do not survive and the same are disposed of accordingly.

14] All concerned to act on basis of authenticated copy of this order.