

Vidya Amin

FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4421 OF 2017

Rooma Mukherjee & Ors.

... Petitioners

Vs.

Sandeep Terrace Cooperative Housing
Society Ltd. & Ors.

... Respondents

Mr. Ashish Gatagat i/b. Vidhi Partners, Advocate for the petitioners.

Mr. Nishant Sasidharan a/w. Ms. Pooja Shah i/b. M/s. Dhruve
Liladhar & Co., Advocate for respondent nos. 1 & 3.

Mr. Pradeep M. Patil, Advocate for respondent nos. 5, 6 & 7/BMC.

CORAM: **MRS.MRIDULA BHATKAR, J.**DATE : **19th June, 2017.****P.C.:**

Rule. Rule made returnable forthwith. By consent, the petitioner is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 21st December, 2016 passed by Ad-hoc Judge, City Civil Court, Greater Mumbai thereby rejecting the Notice of Motion taken out by defendant nos. 1, 3 to 5 for setting aside No Cross order dated 23rd September, 2015.

2. The affidavit-in-chief was filed on 29th April, 2015 and the

documents were produced and exhibited on 17th August, 2015. Thereafter the matter was posted on number of dates for cross-examination of the plaintiff by defendant nos. 1 to 5 & 8, however, on all these occasions, neither the advocate nor defendant nos. 1 to 5 & 8 were present.

3. Perused the roznama. The roznama discloses that finally the learned Judge passed the order of No Cross. After hearing the learned counsel for the petitioners and respondents, it is found that the written statement is filed by the contested defendants. The plaintiff/Society has filed the suit under MOFA. Under such circumstances, considering the facts of the case, though it is rightly observed by the learned Judge that the defendants failed to remain present to cross-examine the witnesses, in all fairness, the said order is set aside with a view to give fair opportunity and last chance to the defendants to cross-examine the plaintiffs.

3. Rule is made absolute in terms of prayer clauses (a) and (b) subject to payment of cost of Rs.25,000/- by the petitioners/defendants to the respondents/plaintiffs within a week.

4. Parties to remain present on the next date before the trial Court and as per the convenience of the Court and plaintiffs. The plaintiffs are to be cross-examined by the defendants without seeking any further adjournment. The cross-examination of the plaintiff is to be taken consecutively and not more than maximum three sittings to be conducted. Parties to cooperate.

(MRS.MRIDULA BHATKAR, J.)