

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.1259 OF 2016
IN
FIRST APPEAL (STAMP) NO.14526 OF 2015
WITH
CIVIL APPLICATION NO.1260 OF 2016
IN
FIRST APPEAL (STAMP) NO.14526 OF 2015**

The Chairman Secretary of Andheri Dhake
Colony CHS Ltd.

...Applicant/Appellant

vs.

Smt. Suman Trimbak Dhake and Anr.

...Respondents

.....

Mr. A.P. Kulkarni, for the Applicant.

Mr. Herbert A. Noronha, for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATED : 2 MAY 2017

P.C. :

. Heard learned Counsel for the parties.

2. Civil Application No.1259 of 2016 is for condonation of a delay of 28 days in filing the First Appeal. For the reasons stated in the Civil Application, the Civil Application is allowed by condoning the delay.

3. The First Appeal is admitted. Printing of paper book is dispensed with. The Appellant shall file a private paper book consisting

of papers and proceedings before the Court below within a period of twelve weeks from today. Issue notice to the Respondents returnable after twelve weeks. Respondent No.1 waives service.

4. Civil Application No.1260 of 2016 is for stay of the impugned decree passed by the Trial Court. The impugned decree declares the suit terrace as part and parcel of the tenement of Respondent No.1 and it permits the Appellant Society (Original Defendant No.2) to recover requisite charges for this terrace at the prevailing rate since the year 1991 from Respondent No.1(Original Plaintiff). In pursuance of this order, according to the Plaintiff, the requisite charges for this terrace have been deposited by the Plaintiff. This position is disputed by Defendant No.2-Society. Defendant No.2-Society will, however, be at liberty to recover requisite charges towards outgoings in respect of the terrace in the monthly bills to be raised on the Plaintiff. These charges will be paid by the Plaintiff and accepted by Defendant No.2 without prejudice to their rights and contentions in the matter. The directions given by the Trial Court in clause (iii) of the operative part of the order shall be stayed pending the hearing of the First Appeal. As and when the property is to be redeveloped, there will be liberty to the parties to apply to this Court for variation of interim relief in the First Appeal concerning the suit terrace and its treatment in the redevelopment proposal. Civil Application is disposed of in the above terms.

(S.C. GUPTE, J.)