

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2076 OF 2017
IN
FIRST APPEAL NO. 1000 OF 2015**

Sushilabai N. Kulkarni and ors. ..Applicants.
vs.
Link Apartment CHS Ltd. and anr. .. Respondents

Mr. Raju Z. Moray i/b Mr. Sagar A. Rane for the Applicants/Org.
Respondent Nos.1 to 3.
Mr. Sheroo Kanuga for the Original Appellant in FA No. 1000/2015.
Mr. K.N. Gor for Respondent No.4.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 18th AUGUST 2017.

P.C.

1] This application was moved by original respondent Nos.1 to 3 in First Appeal No.1000 of 2015 for recalling the order dated 4th April 2017 passed by this Court, as speaking to minutes.

2] The application was moved mainly on the basis of the provisions under Chapter XI Rule II of the Appellate Side Rules that at the time of taking out speaking to minutes, the copy of speaking to minutes application should have been served on otherside. It was contended by learned counsel for the applicants/respondents that neither the respondents nor the counsel for the respondents were

served. Learned counsel for the original appellant - Link Apartment Co-operative Housing Society Ltd. fairly concedes the requisite notice was not given by him to the other party.

3] Heard learned counsel for both side. Perused the earlier order dated 10th February 2016 and the present order dated 4th April 2017. In the order dated 4th April 2017 appearance of the present applicants, i.e. respondent Nos.1 to 3 is not shown. There is no mention about the service of notice on either respondents or the counsel. Inadvertently, without hearing other party, speaking to minutes were allowed and carried out and therefore, I find it just to recall the order dated 4th April 2017 and thus the order dated 10th February 2016 is restored to the file.

4] The Civil Application is disposed of.

5] Mr. Kanuga learned counsel for the original appellant further submits that his praecipe for speaking to minutes is to be taken on board. Mr. Moray, learned counsel for the applicants/org. respondent Nos.1 to 3 submits that this speaking to minutes is going to be contested and as there is no provision to file reply to speaking to minutes by the owners, i.e., original defendants will not be in a

position to put up their say.

6] Considering the submissions made by learned counsel for both sides also heard learned counsel for the defendant-builder, there is no bar in filing the reply to praecipe for speaking to minutes. In order to decide whether the correction sought to be made under speaking to minutes can be decided after getting written reply from the defendants - owners.

7] The photocopy of the preacipe is to be served to the respondents/defendants-owners and the respondent/defendant-builder. Reply to be filed on or before 8th September 2017. Learned counsel for defendant-builder submits that defendant-builder has already filed its reply in Civil Application No. 2076 of 2017 and which is to be read in praecipe dated 4th April 2017.

8] Copy of the preacipe will be handed over to learned counsel for the defendants/respondents -owners by tomorrow.

9] Stand over to 8th September 2017.

(MRIDULA BHATKAR, J.)