

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 14 OF 2013  
IN  
CIVIL APPLICATION NO. 3465 OF 2013  
IN  
FIRST APPEAL NO. 86 OF 2005

Marve Link Apartment Co-op.  
Housing Society Ltd. .. Petitioner  
vs.  
Vithal Raghunath Valvekar  
(since deceased through heirs)  
1(a) Miss Rama Vithal Valvekar & Ors. .. Respondents

Mr. D. A. Joseph for Review Petitioner.  
Mr. S. S. Kulkarni for Respondents.

**CORAM : M. S. SONAK, J.**  
**DATE : 16 MARCH 2017**

**P.C :**

1] Heard Mr. Joseph, learned counsel for the review petitioner  
and Mr. Kulkarni for the original appellant – plaintiff.

2] The review petitioner seeks review of order dated 23 October  
2013, which reads this :

*“1. The applicant is seeking construction of an iron gate at the entrance of 15 feet wide passage. Such a relief is strongly objected on behalf of the appellant as society cannot carry out any construction work without sanction plan from Municipal Corporation of Greater Mumbai, nor they can block the public passage by constructing or installing an iron gate. This application without any cross objection is not maintainable and is rejected.*

*2. At the request of the learned advocate for the appellant stand over to 27.11.2013”.*

3] The review petitioner points out that it was not even a party before the trial court in which the suit has been dismissed and as against which, first appeal no. 86 of 2005 has been instituted. In such circumstances, there was no question of the review petitioner filing any cross objections. Besides, Mr. Joseph points out that since the suit has been dismissed in its entirety, there was no necessity of filing any cross objections.

4] Mr. Joseph submits that in terms of the interim order dated 7 June 2006 granted by this court in first appeal no. 86 of 2005, there is no restraint upon the review petitioner constructing a gate to regulate the movement on the suit passage. However, as a matter of abundant caution, civil application no. 3465 of 2013 was taken out to seek leave to construct a gate in order to regulate the movement on the suit passage. He submits that such gate is necessary for security purposes.

5] Mr. Kulkarni submits that this court, by its interim order dated 7 June 2006 has continued the interim order which was operating during the pendency of the suit. This order was made after hearing the review petitioner. Since, despite this order, the review petitioner was insisting upon blocking the passage by construction of a gate, the appellant has taken out civil application no. 3410 of 2013 seeking a restraint upon the construction of such gate. Mr. Kulkarni

also submits that such an application has been taken out as a matter of abundant caution because according to him, the interim order dated 7 June 2006 restrains the review petitioner from putting up a gate.

6] In the facts and circumstances of the present case, it will be appropriate if civil application no. 3410 of 2013 and civil application no. 3465 of 2013, which is taken up for consideration together. For this purpose, it is necessary that civil application no. 3465 of 2013 is revived. The observation that civil application 3465 of 2013 was not maintainable because, the review petitioner had not filed cross objection is liable to be recalled and is hereby recalled. In the facts and circumstances of the present case, there was no occasion for the review petitioner to file any cross objections.

7] Accordingly, the review petition is allowed and the order dated 23 October 2013 is hereby recalled. The civil application no. 3465 of 2013 is revived / restored. Review petition is disposed of.

8] The civil application no. 3465 of 2013 shall be taken up for consideration along with civil application nos. 3410 of 2013 and 3965 of 2014 on 7 April 2017 on supplementary board.

**(M. S. SONAK, J.)**