

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

WRIT PETITION No. 4287 OF 2013

Smt.Snehalata Vasant Deshpande
since deceased through her heir
and legal representatives
Prafulla Vasant Deshpande

...Petitioner

Versus

Sudhakar Vasudev Khanzode
since deceased through his
heirs and legal representatives
1(a) Saudamini S. Khanzode & Ors.

...Respondents

.....

Mr. R.S. Datar for the Petitioner.

Mr. Kaustav Talukdar a/w. Mr. Kiran Gaikwad i/b. Mr.Ashish
Suryavanshi for Respondent Nos. 1A to 1C.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 19, 2018**

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Writ Petition is disposed of at the stage of admission.

2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 2nd April, 2013 passed by the learned District Judge-2, Pune

below Exhibit 3 in Civil Appeal No. 126 of 2013 is challenged.

3. The petitioner, who is original defendant no.1, claims lessee of plot no. 14. Respondent no.1 is original plaintiff. The petitioner had executed an Agreement dated 26th April, 1982 with respondent no.2 i.e., defendant no.2, who is a builder/ developer, for the purpose of construction of building on plot no. 14. Defendant no.2 *inter alia* sold the flat to the original plaintiff i.e., respondent no.1. The plaintiff had filed a Regular Civil Suit No. 590 of 2003 for mandatory and perpetual injunction before the Court of Civil Judge, Senior Division, Pune, which was decreed on 10th December, 2012. Against the said order, defendant no.1 has filed Civil Appeal No. 126 of 2013. During the pendency of the Appeal, the appellant i.e., defendant no.1 preferred an application for stay of the judgment and decree dated 10th December, 2012 passed by the learned Civil Judge, Senior Division, Pune. The First Appellate Court partly allowed the said application and only clause no. 2 of operative part of the judgment and decree passed by the learned Judge of the Trial Court in respect of conveyance and formation of the society was stayed. The said order is challenged by the appellant i.e., defendant no.1 in this Writ Petition.

4. The learned Counsel for the petitioner submits that as on today, two flats are constructed on the suit land and, therefore, the society cannot be formed when this Petition was not before this Court. By order dated 19th June 2013, this Court has further stayed clause nos. 4 and 5 of the impugned judgment i.e., removal of the lock of the terrace and permit the plaintiff to carry out water proofing of terrace to construct the over-head water tank on the terrace and to use terrace as common facilities and also to remove the lock of front gate, Bamboo partition and permit the plaintiff to park his car inside the gate. He further submits that the Civil Appeal is pending since 2013 and it can be expedited by the Appellate Court.

5. The learned Counsel for respondent nos.1A to 1C, who are the legal heirs of the original plaintiff, submits that they have no objection if at all the Civil Appeal is expedited by the Appellate Court. He prays that the legal heirs of the original plaintiff be allowed to carry out water proofing of terrace, as there is continuous leakage in the flat.

6. The submissions made by the learned Counsel for the petitioner and respondents nos.1A to 1C are reasonable. However, the prayer made by the learned Counsel for respondent nos.1A to 1C is also to be allowed with a view to better preservation of the flat and the property. Thus, the Writ Petition is disposed of with following order:

ORDER

- (i) The learned District Judge-2, Pune to decide Civil Appeal No. 126 of 2013 on or before 30th August, 2018.
 - (ii) Respondent nos. 1A to 1C are allowed to carry out water proofing of terrace, which can be done during the pendency of the Appeal.
 - (iii) The petitioner shall co-operate respondent nos.1A to 1C for the work of water proofing of terrace. The rest of the order passed by the Appellate Court and this Court to continue till final disposal of the Civil Appeal.
7. All contentions are kept open.

(MRIDULA BHATKAR, J.)