

Sarnobat

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

**APPEAL FROM ORDER NO. 313 OF 2018
ALONGWITH
CIVIL APPLICATION NO. 411 OF 2018**

M/s. Atishay Realtors Pvt. Ltd. ... Appellant
Vs.
Kidwai Nagar Co-operative Housing
Society (Proposed) & Ors. ... Respondents.

Mr. Harish R. Pawar, for the Appellant.
Mr. Surel S. Shah, for the Respondents.

CORAM : V. M. DESHPANDE, J.

DATE : 17th JULY, 2018.

P. C. :

Not on board. Taken on board.

1. The learned counsel for the appellant has filed the affidavit which is taken on record. Heard learned counsel for the appellant and learned counsel for the respondents.
2. This matter was listed before this Court for admission on 12th July, 2018. After hearing the parties to the appeal, this Court admitted the appeal and granted order in terms prayer clause (b) of Civil Application No. 411 of 2018.
3. Today in the morning session, Shri Shah mentioned the matter for taking it on production board. The prayer was accepted by

this Court, that is how the matter is appearing on production board.

4. Learned counsel Shri Shah for the respondents submits that by consent of the respondents the impugned order dated 31st March, 2018 passed by Principal Judge, Greater Bombay in Notice of Motion No. 4066 of 2015 be set aside and appeal filed on behalf of the appellant be allowed. Prayer accepted. The order dated 31st March, 2018 passed by the Principal Judge Greater Bombay in Notice of Motion No. 4066 of 2015 in S.C. Suit No. 2151 of 2015 is hereby set aside and the appeal is allowed.

5. The Trial Court is directed to re-hear the Notice of Motion No. 4066 of 2015 since it was the contention of the counsel for the appellant that at the time of admission on 12th July, 2018 the various documents filed on record before the Court below were not considered by the Court below. In that view of the matter, the Court below is directed to re-hear the Notice of Motion No. 4066 of 2015 by giving opportunity of hearing to the parties to the Notice of Motion and after considering all the pleadings, documents filed on record. It is also made clear that the parties are permitted to file additional affidavit, additional documents on record. Those also shall be considered by the Court below. All these exercise shall be done by the Court below within a period of 12 weeks from today and till that time, the interim order granted by this Court in favour of the appellant to continue.

6. With this the appeal is allowed and disposed of. Civil Application is also disposed of.

[V. M. DESHPANDE,J.]