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

**CIVIL APPLICATION NO.707 OF 2018
IN
APPEAL FROM ORDER NO.528 OF 2018**

M/s Westcoast Realcon Developers ... Appellant
V/s.
Mohsin Hidayat Shaikhani and ors ... Respondents

**ALONGWITH
CIVIL APPLICATION NO.706 OF 2018
IN
APPEAL FROM ORDER (ST) NO. 17878 OF 2018
WITH
CIVIL APPLICATION (ST) NO.17879 OF 2018
IN
APPEAL FROM ORDER (ST) NO. 17878 OF 2018**

Fouzia S. Masood Shekhani and ors ... Appellant
V/s.
Mohsin Hidayat Shaikhani and ors ... Respondents

Ms. Neeta Karnik a/w Mr. Tejas Pawar, for the appellant in Appeal (ST) No.17878 of 2018
Ms. Preeti Walimbe a/w Ms. Vrushali Penkar, for appellant in Appeal No.528 of 2018.]
Mr. Sharik Nachan i/by Ramiz Shaikh i/by S.M.M. Owasis Jahangir i/by Rizwan Merchant & Associates, for respondent No.1 in Appeal No.528 of 2018.
Mr. Rupesh Bobade for respondent No. 3, 6, 8, 10 to 17,21, 25, 27 in Appeal No.528 of 2018.
Mr. Sandeep Bali, for respondent No.34.1, 34.2, 34.3, 34.4, 35 and 36 in Appeal No.528 of 2018.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st NOVEMBER, 2018.

P.C. :

1] Learned counsel for parties in both the Appeals, submit that both the appeals can be disposed of in terms of Minutes of Order arrived at between the parties.

2] The appellant in Appeal No.528 of 2018, who is respondent No.1 in both the Appeals, is the only contesting party. Appellant and respondent No.1 are present before the Court and admit the contents of the minutes of the order. The Minutes of order arrived at between the parties are taken on record and marked "X" for identification. They read as under:

"1. The Appellants shall develop the suit land as per the terms layed out in the Development Agreement registered on 20.5.2015 and 22.12.2016, by excluding the area marked in Exhibit 'X-1' belonging to Respondent No.1 and his branch of Family, namely Smt. Nabila Hidayat Shekhani, Mr. Sadik Shekhani, Smt. Shabana Aziz Bute, Smt. Zarina Shakeel Chaugle, Smt. Huda Habib Shaikh, Smt. Rizwana Shoeb Damad, Smt. Shamsunnia Sabir Bute. They will also execute POA given to them wherever required.

2. The Appellants undertake to this Hon'ble Court that while demolishing the structure standing on the suit land, they will not demolish that part of the structure on the Ground Floor

which is in the possession of the Respondent No.1 and his branch of Family namely Smt. Nabila Hidayat Shekhani, Mr. Sadik Shekhani, Smt. Shabana Aziz Bute, Smt. Zarina Shakeel, Chaugle, Smt. Huda Habib Shaikh, Smt. Rizwana Shoeb Damad, Smt. Shamsunnia Sabir Bute as shown in the Assessment Report, Murud Zanjira Municipal Corporation dated 18th April, 2018, bearing Nos. 19/39(1), [Z1AW19A000079], 19/39(2) [Z1AW19A000080] and 19/39(3) (Z1AW19A000081]. The said assessment reports (annexed at page Nos. 63, 64 and 65 of the CA 707 of 2018 in Appeal from Order No.528 of 2018) refer to the residence and 3 shops coming to the share of the branch of the family of Respondent No.1, admeasuring about 191.58 sq. mts. i.e , 2062.15 sq. ft marked and annexed hereto as Exhibit X is the copy of the said Assessment Receipts issued by Murud Zanjira Municipal Corporation.

3. The Appellant further undertakes not to demolish the area as described in Clause 2 hereinabove. For the purposes of further clarification, in the sketch of the area not to be demolished is the area on the ground floor only, structure on First and Second Floor will be demolished. The sketch of the said area is marked in yellow colour and annexed hereto as Exhibit X-1. The respondent No.1 and his branch of family will retain the

possession of the said Area and further acknowledge that they shall not be entitled to any share in the proposed redeveloped building, to be constructed on the remaining portion of the suit land.

4. The Appellant further undertakes that the demolition of the premises apart from the area described in Clause 2 hereinabove would commence from 20th November, 2018 and shall be completed on or before 20th December, 2018, within the stipulated period of time. The Appellant while undertaking the demolition of the structure shall not cause any damage of the structure retained by the Respondent No.1. The Appellant states that under no circumstances the said demolition would be delayed beyond 20th December, 2018. In case of any delay, the Appellants shall pay to the Respondent No.1 and his branch of family, Rs.2000/- per day of the delay.

5. The Appellant further undertakes to take due care and precautions so that no harm/damage is caused to the electrical fittings, water storage tank, drainage tank and the structure standing on the area occupied and possessed by the Respondent No.1, and if any such damage is caused to the area described in Clause No.2, the Appellant shall rectify the said damage and restore the Respondent No.1's part of the suit property to its

original condition at the cost and expenses of the Appellant.

6. The Respondent No.1 undertakes that he will not cause any obstruction to the above said demolition undertaken by the Appellant and further cooperate with the Appellant in moving out of the said area occupied by him for the stipulated period of time as mentioned in Clause 4 hereinabove.

7. The appellant and respondent No.1 both mutually agree that the structure occupied by respondent No.1 shall be photographed and duly signed by both the parties, before and after the demolition of the rest of the premises, so as to ascertain whether any damage has been caused to the same.”

3] In view of the Minutes of order, both the appeals stand disposed off.

4] Needless to state that the impugned orders passed by the trial Court, in both the Appeals, therefore, stand set set aside.

5] In view of disposal of the Appeals, pending Civil Applications therein no more survive and they are disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]