

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

**CIVIL APPLICATION NO.2796 OF 2014
IN
FIRST APPEAL NO.1488 OF 2012**

Shirin Co-Op.Hsg.Soc. Ltd. & Anr. .. Applicants/Appellants
Vs.
Tardeo Properties Pvt. Ltd. & Anr. .. Respondents

ALONG WITH

**CIVIL APPLICATION NO.3562 OF 2012
IN
FIRST APPEAL NO.1488 OF 2012**

Tardeo Properties Pvt. Ltd. & Anr. .. Applicants/Appellants
Vs.
Shirin Co-Op.Hsg.Soc. Ltd. & Anr. .. Respondents

Mr.G.S. Godbole a/w Mr.Arsh Misra i/by M/s.M.V. Kini & Co. for the applicant in CAF No.2796 of 2014.
Mr.Atul Damle, Senior Advocate a/w Mr.S.A. Bhagwat for the applicant in CAF No.3562 of 2012.

**CORAM : R.D.DHANUKA, J.
DATE : 14th November 2019**

P.C.:

. By consent of parties, both the civil applications are heard together and are being disposed of finally.

2. The applicants in Civil Application No.3562 of 2012 seeks stay of the operation, implementation and/or execution of the impugned judgment and decree dated 23rd August 2012 passed by the trial Court. In so far as Civil Application No.2796 of 2014 is concerned, this civil application filed by the original respondents is seeking No Objection for

installing Fire Fighting System in the building, to allow the applicants to carry out necessary repair work and to allow the society to lay down the Mahanagar Gas Pipeline in the building.

3. In so far as the Civil Application No.3562 of 2012 is concerned, Mr.Damle, learned senior counsel for the applicants invited my attention to the ad-interim order passed by this Court on 17th October 2012 thereby granting ad-interim stay of the operation and implementation of the judgment and decree dated 23rd August 2012. The trial Court had declared that the developers were liable to execute Deed of Conveyance in respect of the suit property within sixty days from the date of the said decree. In paragraph 4 of the operative part of the judgment and decree, it is directed that the developers shall render accounts of all amounts received and/or refund and/or use the same for the purposes for which they were collected. In paragraph 5 of the operative part of the judgment and decree, it is directed that the developers were perpetually restrained from disposing off, alienating and/or creating any third party interest in the building no.3 situated at the address mentioned in paragraph 5 of the operative part of the said judgment and decree.

4. In view of the fact that there was ad-interim stay of the operation and implementation of the judgment and decree including the

direction to execute Deed of Conveyance which order is in force since 2012, I am not inclined to modify that part of the judgment, in so far as the directions issued in paragraphs 1 to 3 of the operative part of the judgment and decree passed by the trial Court are concerned.

5. In so far as the directions issued in paragraph 4 of the operative part of the said judgment and decree are concerned, in my view, no prejudice would be caused to the developers if they render accounts of the amounts received towards maintenance and other recoveries made except consideration amount. The original appellants are accordingly directed to render accounts of all amounts received by the original appellants from the flat purchasers and commercial tenants, if any, i.e. relating to the maintenance of the building and the amount spent out of the said amount till date within eight weeks from today.

6. It is made clear that filing of the said statement would be without prejudice to the rights and contentions of both the parties. In so far as the directions issued in paragraph 4 of the operative part of the said judgment and decree is concerned, the refund, if any, would be considered at the stage of final disposal of the appeal. In so far as the directions issued in paragraph 5 of the operative part of the said judgment and decree is concerned, I am not inclined to modify that part of the judgment and decree passed by the trial Court.

7. In so far as the prayers mentioned in Civil Application No.2796 of 2014 are concerned, Mr.Godbole, learned counsel for the original respondents invited my attention to the letter dated 6th May 2011 addressed by the Municipal Corporation, Mumbai Fire Brigade Department directing that various steps shall be taken to provide Fire Fighting Equipments in the building constructed by the developers and also to provide water tank.

8. It is the case of the developers that they had already made provision for Fire Fighting Equipments in terms of the agreement entered into between them and the society.

9. In my view, Mr.Godbole, learned counsel for the society is right in his submission that except the water tank, all other Fire Fighting Equipments would be provided in the building itself considering the safety of the flat purchasers. The society has to comply with directions issued by the Municipal Corporation, Mumbai Fire Brigade Department. I am inclined to permit the society to install Fire Fighting Equipments in the building and also to install under ground water tank. It is made clear that the society shall not claim any equity and shall carry out construction at its own costs at the first instance and shall remove the equipments and water tank in the event of the society not succeeding in the first appeal

and if so directed by this Court. It is made clear that if any under ground water tank is to be constructed as per order dated 6th May 2011 passed by the Municipal Corporation, Mumbai Fire Brigade Department, the same shall be under supervision of the appellants. If it is possible to carry out construction of under ground water tank within the compound of building no.3, the society shall explore the said possibility. In the event of any difficulty, the parties would be at liberty to apply.

10. I am also inclined to accept the prayer for permitting the society to lay down the Mahanagar Gas Pipeline in the building and to allow the applicants to carry out necessary repair work for installing the Gas Pipeline as well as the Fire Fighting System however, at the costs of the society exclusively at the first instance. If any excavation is required to be carried out, the same shall be carried out in the presence of the architect, if any, appointed by the developers. The society shall inform about the excavation activities one week in advance to the developers. The society shall not claim any equity and shall not seek any reimbursement of the amount spent on such activities if the society does not succeed in the first appeal before this Court. It is made clear that this Court has not expressed any views in respect of the open space in respect of which there is a decree already passed by the trial Court in favour of the developers.

11. Both the civil applications are disposed of on aforesaid terms. No order as to costs.

R.D.DHANUKA, J.