

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

**CIVIL APPLICATION NO. 1425 OF 2018
IN
SECOND APPEAL NO.487 OF 2015**

Shri Chinar Co-operative Housing Society Ltd. ... Applicant

In the matter between

Premchand Kaliram Agarwal ... Appellant

Versus

M/s Shyam Gandhi Construction Company ... Respondent

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Mr. A. S. Khandeparkar a/w Mr. Amogh Karandikar i/b
Khandeparkar & Associates for the Applicant in Civil Application
No.1425 of 2018.

Mr. Sanjay Kshirsagar for the Appellant in Second Appeal.

Mr. Sudhir V. Sadavarte for Respondent No.1.

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CORAM : SANDEEP K. SHINDE, J.

DATE : 1st MARCH, 2019.

P. C.:

1. The applicant is a co-operative housing society, consisting of 28 residential flats, two shops and five commercial establishments. One of the shops i.e. shop No.1 is in possession of Shri Premchand Kaliram Agarwal. Dispute between Shri Premchand Kaliram Agarwal and M/s Shyam Gandhi Construction Company is pending in this Court in Second Appeal No.487 of 2015 in respect of shop No.1. In the second appeal, vide order dated 2nd March, 2016 passed in Civil Application No. 1032 of 2015 possession of Shri Premchand Agarwal in shop No.1 is protected.

2. The applicant society has resolved to redevelop the building and appointed a developer. It is applicant's case that unless the order dated 2nd March, 2016 passed in Civil Application No. 1032 of 2015 in Second Appeal No. 487 of 2015 is modified, the society may not be able to hand over the building of the society to the developer for its redevelopment.

3. It is in these circumstances the applicant is seeking modification of the order and further seeking directions to Mr. Agarwal to hand over the possession of shop No.1 to the applicant against an undertaking that same shall be handed over to him after its redevelopment upon receiving completion certificate from the planning authority.

4. Heard learned Counsel for the applicant and learned Counsel for the appellant-respondent.

5. In the interest of all, since Mr. Agarwal is in possession of shop No.1, he shall hand over the possession of shop No.1 to the applicant society within a period of one month from today. The applicant society undertakes to hand over the possession of the shop No.1 to Mr. Agarwal after its redevelopment and put him in possession thereof. The undertaking is accepted. Applicant

society is directed to file an undertaking approved by the appellant and respondent within a period of fifteen days from today.

6. It is made clear that order dated 2nd March, 2016 is modified to the aforesaid extent. It is further made clear that this order is passed to facilitate the society for redevelopment of the building and without prejudice to the rights and contentions of the appellant and the respondent in the second appeal.

7. The rights of the respondent shall not be prejudiced by the arrangements made under this order in any manner. It is clarified that a transit accommodation and the facilities extended to the other members of the society during the period of redevelopment, the same shall be extended to Mr. Agarwal.

8. The civil application is allowed in the aforesaid terms and disposed of.

(SANDEEP K. SHINDE, J.)