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

WRIT PETITION NO. 13311 OF 2017

Sai Heritage Co-operative Housing Society Ltd. ... Petitioner.

V/s.

M/s. Saibaba Builders and Developers & Ors. ... Respondents.

Mr. R.S. Gadekar I/b. S.P. Deo for the Petitioner.

Mr. Pavan S. Patil for Respondent 1.

CORAM : N.M. Jamdar, J.

DATE : 28 January, 2019.

P.C. :-

The Petitioner – Plaintiff has challenged the order passed by the learned Civil Judge, Junior Division, Pune dated 12 September 2017, rejecting the application filed by the Petitioner below Exhibit 175 in the Suit RCS No.42 of 2005 instituted by it.

2. The Petitioner is a Co-operative Housing Society and the Respondent – Defendant is a developer. A Suit is filed for specific performance, declaration and injunction. In this Suit, an application was taken out by the Petitioner – Plaintiff for directions to the Respondent – Developer to pay the electricity bills of the premises.

3. As the learned Civil Judge has noted the respective liabilities of the parties to pay the maintenance, etc. is the subject matter of dispute in the Suit. The members of the Petitioner – Society are admittedly in possession and are consuming the electricity. It appears that the Petitioner had paid the charges for some period.

4. In these circumstances and in view of the fact that the Suit is pending where the arguments regarding the liability would be considered on their own merits after the evidence is so adduced, it is not necessary to interfere in the Writ Jurisdiction.

5. The learned Civil Judge has also not concluded the issue and it is deferred at the time of hearing. The learned Civil Judge can pass appropriate order in respect of the electricity charges paid by the Petitioner during the pendency of the Suit, in case the learned Civil Judge comes to the conclusion that the Respondent – Developer was liable to pay the same. Keeping contentions of the parties open in that regard to be decided in the pending Suit, the Writ Petition is disposed of.

(N.M. Jamdar, J.)