

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3102 OF 2018

Bindu Rajesh Desai & Anr.

..... Petitioners

VERSUS

**Divisional Joint Registrar,
Co-operative Societies,
Mumbai Division & Ors.**

..... Respondents

Mr.Anoushak Daver, a/w. Mr.Sachin V.Masurkar, Ms.Aarti Kulkarni,
Mr.Nilesh Parab for the Petitioners.

Mr.Bhupesh V. Samant for the Respondent nos. 2 and 3.

Mr.Swapnil Ravindra Patil for the Respondent nos.4, 6 and 7.

Mr.Manas N. Gawankar for the Respondent no.5.

CORAM : R.D. DHANUKA, J.

DATE : 3rd JUNE, 2019

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioners have impugned the award dated 11th January, 2018 filed by the petitioners on the ground that the Divisional Joint Registrar cannot decide the issue of title in respect of the flat in question.

2. Mr. Daver, learned counsel appearing for the petitioners on instruction submits that his client has already filed a civil suit being (L) no.4220 of 2018 before the City Civil Court at Dindoshi and has also

applied for interim relief by filing a notice of motion. He submits that all the parties who are parties to this petition are parties to the said suit. Statement is accepted.

3. It is submitted by the learned counsel that since his clients have already filed a civil suit in the civil court for adjudication of title in respect of the flat in question, his clients will pursue the said suit and seeks liberty to withdraw this petition. He submits that observations and conclusion drawn by the Divisional Joint Registrar or by the Recovery Officer insofar as this flat is concerned, shall not be binding upon the petitioners.

4. Mr. Samant, learned counsel appearing for the respondent no.3 states that his client has no objection if the petitioners pursue the said suit. His client however does not admit the averments and contentions raised by the petitioners in the said suit. Statement is accepted.

5. The petitioner seeks to apply for amendment in the plaint in the said suit (L) No.4220 of 2018 within one week from today. It is made clear that if any such application is made for seeking amendment in the said suit, the same can be considered by the trial court on its own merits.

6. If any application for interim relief is being pressed by the petitioners, the same as well as the said suit shall be decided on its own merits without being influenced by the observations made and the conclusion drawn in the impugned order passed by the Special

Recovery Officer as well as the Divisional Joint Registrar.

7. If the affidavit in reply is not filed by any of the defendants in the said notice of motion, the same shall be filed within two weeks from today with a copy thereof to be served upon the plaintiffs' advocate simultaneously. If any application for amendment is allowed, the defendants shall be allowed to file additional affidavit in reply to the amended copy of the plaint.

8. The learned trial court to make an endeavour to dispose of the application within six weeks from today.

9. None of the parties shall seek any unnecessary adjournment before the learned trial judge and shall co-operate with each other and with the learned trial judge in disposing of the interim application.

10. For a period of six weeks from, *ad-interim* protection granted by this court on 11th April, 2019 in this petition to continue.

11. Writ petition is disposed of in the aforesaid terms.

12. It is made clear that this court has not expressed any views on the merits of the matter. All contentions of parties are kept open.

13. If the learned trial judge is unable to dispose of the interim application within a period of six weeks from today, the petitioners would be at liberty to seek extension of the interim relief before the

trial court. If any such application is made, the same shall be considered on its own merits.

14. The parties as well as the trial court to act on the authenticated copy of this order.

[R.D.DHANUKA, J.]