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

**INTERIM APPLICATION NO.131 OF 2021
IN
FIRST APPEAL NO.1336 OF 2017**

M/s.Romell Realtors .. Applicant

vs.

Maharashtra Housing & Area
Development Authority .. Respondent

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Mr.Girish S.Godbole i/b Ms.Merlyn Dias for the Applicant

Mr.P.G.Lad for MHADA

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**CORAM: K.K.TATED, J.
DATED : FEBRUARY 26, 2021
(IN CHAMBER AT 2.15 P.M.)**

P.C.

. Heard.

2. By this application, Applicant is seeking directions against the Respondents original defendants to cross-examine the witness of the Petitioner original plaintiff only in respect of additional evidence after remand, if any, given by the respective parties.

3. The learned Counsel for the Applicant submits that they filed First Appeal No.1336 of 2017 challenging the judgment and decree dated 12.11.2016 passed by Bombay City Civil Court at Dindoshi in S.C.Suit No.1860 of 2010 dismissing the Applicant's Suit for injunction restraining the Respondents from interfering with physical possession of the Applicant's plot of land admeasuring 2858.5 sq. meters bearing CTS No.73, 73/6 to 27 (corresponding to S.No.141/2 (pt.) of Village Maghathane and situated at Ferreira Compound, Rajendra Nagar, Datta Pada, Borivali (E), Mumbai together with structures thereon.

4. The learned Counsel for the Applicant submits that during the course of arguments, both the parties decided to file minutes of order for setting aside the finding given by Trial Court on issue nos.1 to 6 and 8 so that parties can lead their evidence. He submits that Clause No.4, 6 and 7 of the minutes of order dated 09.09.2019 read thus:

“4. In view of this, after hearing the respective counsels for sometime on 22/08/2019, the hearing was adjourned to enable for the Advocates for the Respondent to take instructions. By further Order dated 28/08/2018, at the request of the Advocates for the Respondent the hearing was adjourned to enable the Advocates to take instructions whether the Respondent is ready and willing for a remand of the matter to the trial court for re-hearing after giving liberty for both the parties to lead evidence Accordingly, the Executive

Engineer, Borivali Division, Mumbai Board of MHADA has addressed letter dated 30/08/2019 to the Advocate for the Respondent stating that it has no objection for remanding the matter to the trial court for fresh hearing. By Order dated 06/09/2019, the said letter dated 30/08/2019 has been taken on record and marked as "X" for identification.

6. In view of this, the impugned Judgement and Decree dated 12/11/2016 passed by the Ld. Judge of City Civil Court at Dindoshi (Borivali Division) in S.C. No. 1860 of 2010 is partly quashed and set aside without disturbing the finding about the maintainability of the Suit, which has been recorded in favour of the Plaintiff on Issue No.7. The findings on Issue Nos. 1 to 6 and 8 are quashed and set aside. The Suit is remanded for re-hearing. Parties are at liberty to file additional evidence if they so desire. Parties are also at liberty to request the Ld. Judge of the trial court to suitably correct Issue No. 3 by pointing out that Notification dated 31/10/1944 was a Notification for requisition and not for acquisition.

7. Parties shall lead additional evidence, if any, within a period of 4 months from the date on which the parties appear before the trial court after remand."

5. The learned Counsel for the Applicant submits that bare reading of the minutes of order dated 09.09.2019 shows that matter was remanded for leading additional evidence in respect of issue nos.1 to 6 and 8 only. Therefore, there is no question of permitting the Respondents to cross-examine the Applicant's witness on evidence already recorded by the Trial Court before remanding the matter by order dated 09.09.2019. Hence, they preferred the present application for clarification to that effect.

6. The learned Counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to clarify that the Respondents cannot cross-examine Applicant's witness on evidence which is already recorded before passing order dated 09.09.2019 by this court.

7. The learned Counsel for the Applicant relies on judgment of the Rajasthan High Court, Jaipur Bench in ***Niranjan Lal vs. U.I.T., Alwar & Ors. reported in RLW 2007(1) RAJ.350***. He relies on paragraph 22 which reads thus:

"22. The purpose behind the Rules is not to initiate de novo trial. The purpose is also not to prolong the dispute between the parties. Since the judiciary must endeavour to decide the dispute as soon as possible, the appellate Court is expected to decide the case at the appellate stage itself. Therefore, the tendency to remand the case in toto after setting aside the judgment of the trial Court and the

tendency to direct a de novo trial is against the tenor of law. The appellate Court is expected to exercise its power within the confines to Rules 23 to 26-A of the Code. Ample powers have been given to the appellate Court under Rules, 27, 28 and 29 of the Code to take additional evidence and to decide the issues re-framed by it. Since the trial Courts are the most overburdened Courts in the judicial hierarchy, the appellate Court, should refrain from remanding the case in toto in a routine manner. What can be done at the appellate stage, need not be remanded back to the trial Courts. After all, the buck has to stop somewhere.”

8. On the other hand, the learned Counsel for the Respondents tendered affidavit-in-reply dated 26.02.2021. Same is taken on record. He submits that in Consent Minutes no where it is stated that, parties cannot cross-examine the witness on evidence which is recorded on or before 09.09.2019. He submits that bare reading of clause no.4, 6 and 7 of the consent minutes of order clearly shows that, both the parties have right to cross-examine witness on all the topics. Therefore, there is no substance in the present interim application and same is required to be dismissed with costs.

9. Heard.

10. It is to be noted that bare reading of the consent minutes of order clearly shows that there is no bar for the parties to cross-examine the witnesses on the evidence already recorded by the Trial Court. Not only that the order

passed by this court dated 09.09.2020 was by consent. Therefore, there is no question of interfering with the said order at this stage.

11. Not only that, the authority cited by the learned Counsel for the Applicant in the matter of ***Niranjan Lal vs. U.I.T., Alwar & Ors.*** (Supra) is not applicable in the facts and circumstances of the present case. In that case, the order was passed by the court. There was no consent order between the parties. Therefore, Rajasthan High Court held that Appellate Court is expected to exercise its power within the confines to Rule 23 to 26-A of the Code whereas in the case in hand, the impugned order dated 09.09.2019 was passed by consent of both the parties.

12. In view of the above mentioned facts, I do not find any substance in the present Interim Application.

13. Hence, Interim Application stands dismissed.

14. No order as to costs.

(K.K.TATED, J.)