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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.934 OF 2021
IN
FIRST APPEAL NO.1714 OF 2013**

Abhiram Co-operative Housing
Society Ltd.Applicant

Abhiram Co-operative Housing
Society Ltd.Appellant.

V/s
Kandivali Priyadarshani Co-operative
Housing Society Limited and Anr.Respondents

Mr. Amogh Singh a/w Mr. Atul S. Singh for the Applicant.
Mr. Mohan Pillai i/b Mrs. Madhavi Pillai for Respondent No.1.
Mr. A.Y. Sakhare, Senior Advocate a/w Mr. Nikhil More i/b Bhavin
Bhatia for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 25, 2021

P.C.:-

1] This is an Interim Application taken out by the Appellant/original Plaintiff – Abhiram Co-operative Housing Society Ltd, thereby seeking modification of the order dated September 16, 2005 under the provisions of Order 39 Rule 4 of C.P.C. Prayer clause (a) of the said Interim Application reads as under:-

“(a) that this Hon’ble Court be pleased to modify order dated September 16, 2005, to the extent that Appellant through Respondent No.2 is permitted to comply with Special Instruction (3) of Intimation of Disapproval dated August 1, 2018, as issued by Municipal Corporation of Greater Mumbai;”

2] Considering the issue involved in this matter, this Court by an order dated 12th July, 2021 appointed Mr. Rajiv Patil as Mediator. The respective Counsel informed that Meditation has proved fruitful and as such Report of Mediator is placed on record. Mr. Sakhare, learned Senior Counsel appearing for Respondent No.2 accordingly tendered corrected terms/resolution as were suggested by the Mediator. As such Report and said corrected terms/resolution are taken on record and marked “X” for identification. According to Mr. Sakhare, in the last line of para 2 of the Mediator’s Report, the word “Respondent No.2” be corrected as “Respondent No.1” to which other Counsel concedes.

3] As far as corrections suggested in para 3 of the said Report in respect of this order being passed in Interim Application and not on First Appeal and deletion of the words “for all the time” and the sentence “However the Respondent Society shall not obstruct / prevent / prohibit the Applicant Society using the said area being the part of CTS No.1344” are concerned, the said suggestions are duly conceded by Counsel for the Appellant and Respondent No.1 and said words and sentence in para 3 stands deleted.

4] Mr. Pillali, learned Counsel acknowledges on behalf of his client -Respondent No.1 that he has received consideration of Rs 26 lakhs through Demand Draft drawn in four of his client from proposed Respondent No.2.

5] In the wake of above, Interim Application stands disposed of in terms of the corrected terms/resolution which read as under:-

(1) The Developers of the Applicant Society and/or Applicant Society shall pay Rs 26,00,000/- (Rupees Twenty Six Lakhs Only) towards the compensation to

the Respondent Society, for allowing Applicant Society to carry out the necessary work as per special instructions (3) of Intimation of Disapproval (IOD) dated 13-08-2018 and the Applicant Society shall carry out requisite work on the access road to raise the ground level.

(2) The Applicant Society shall take appropriate action and carry out the work of storm water drainage and/or regulating the water way preventing water logging in the property of Respondent No.1 for all the time throughout the year.

(3) The Respondent Society is entitled to use the said area of approximately 45.77 mt in length x 4.57 width by way of access and/or Right of Way to the Respondent Society pending Appeal.

6] Needless to clarify that First Appeal has to be decided on its own merits.

7] The word of appreciation has to be placed on record for cooperation extended by the parties and efforts taken by Mr. Rajiv Patil who effectively acted as a Mediator for resolving this dispute.

(NITIN W. SAMBRE, J.)