

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 388 OF 2021

WITH

INTERIM APPLICATION NO. 2834 OF 2021

ALONG WITH

FIRST APPEAL NO. 389 OF 2021

WITH

INTERIM APPLICATION NO. 2835 OF 2021

Messrs Sunrise Builders, Mumbai

...Appellant/
Applicant/

Versus

Karmayog Co. Operative Housing Society Ltd.,
Mumbai

...Respondent

Mr. Surel Shah a/w Mr. D. V. Deokar, Ms. Jaylaxmi Garud i/by
Parimal K Shroff & Co., for the Appellant-applicant in both matters.

Mr. Shreepad Murthy a/w Clarissa Miranda a/w Apurwa Mhatre,
for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : 8th DECEMBER, 2021.

P.C.:

INTERIM APPLICATION NOS. 2834 OF 2021 & 2835 OF 2021

1. Heard the learned counsel for the appellant-applicant and the learned counsel for the respondent.
2. These applications are preferred seeking stay to the execution, operation and implementation of the Common Judgment

and Decree passed by the learned Judge, City Civil Court in Suit No.9438 of 1989 and 10100 of 1990, whereby the suit preferred by the respondent society i.e. Suit No.9438 of 1989 came to be decreed and it was declared that the suit agreement dated 18th October, 1979, of which the plaintiff/appellant sought specific performance by instituting suit No. 10100 of 1990, was validly terminated and the appellant was directed to handover the vacant and peaceful possession of underdeveloped plot to the respondent society. Conversely, the suit No.10100 of 1990, instituted by the appellant for specific performance of the said suit agreement, came to be dismissed. The parties are at issue as to who is in possession of the plot of land, which was the subject matter of the suit.

3. Since in the instant applications, prayer is made, [prayer clause 1(a)] to restrain the respondent, their servants, agents, assignees etc. from disturbing or interfering in possession of the occupation of the appellant, without delving into the contentious issue of possession, it would be expedient to stay the execution, operation and implementation of the impugned decree and direct the parties to maintain status-quo as regards the suit property, till the hearing of these appeals.

4. The learned counsel for the respondent submitted that, having regard to the age of the building of the respondent-society,

there is likelihood of proposal for re-development of the said building being mooted. In that eventuality, the respondent will have liberty to take out an appropriate proceeding for seeking appropriate relief. In that case, the appellant-plaintiff in the suit for specific performance, will also have efficacious opportunity of hearing to deal with such a prayer.

5. Interim Application Nos. 2834 of 2021 & 2835 of 2021 are disposed of.

FIRST APPEAL NOS. 388 OF 2021 & 389 OF 2021

1. Heard.

2. Admit.

3. Call Record and proceedings.

4. The learned counsel for the appellant submits that the appellant has already filed a private paper book containing the pleading, evidence and documents tendered before the learned Judge, City Civil Court.

5. The learned counsel for the respondent seeks liberty to file additional compilation of documents, including the documents which do not form part of the compilation of documents filed on behalf of the appellant.

6. Having regard to the pendency of the dispute, and the fact that the suit agreement was executed in the year 1979, the

hearing of the appeal stands expedited.

Liberty to tender additional compilation of documents within a period of four weeks.

7. Liberty to the parties to move for early hearing of the appeals.

(N. J. JAMADAR, J.)