

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

INTERIM APPLICATION NO.2107 OF 2021

IN

WRIT PETITION NO.3174 OF 2012

Richline Finvest Pvt. Ltd.

.. Applicant-Petitioner

Vs.

Haji Ali Rewa Premises CHS Ltd. and Ors.

.. Respondents

Mr. Gautam Ankhad, with Mr. Shanay Shah, Mr. Darshan Mehta and Mr. Aaditya Mapara, i/by Dhruve Liladhar & Co., for the Applicant-Petitioner.

Mr. P.D. Dalvi, i/by Mr. V.M. Joshi, for Respondent Nos.1 to 4.

CORAM : A. K. MENON, J.

DATE : 21ST SEPTEMBER, 2021.

P.C. :

1. By this IA, the applicant-petitioner, who claims to be member of the respondent no.1-society, seeks a direction against the society to issue a No Objection Certificate in order to enable the applicant to execute an Agreement of Leave and License in favour of one Mr. Karan Jain in terms of the letter dated 3rd August 2021, annexed as Exhibit-D to the IA.

2. Mr. Ankhad appearing in support of the IA submits that the respondent no.1-society has unreasonably declined to issue a No Objection Certificate for the reasons set out in a letter dated 9th August 2021 issued by its Advocate to the director of the applicant, annexed as Exhibit-E to the IA. He submits that

since bare license does not create any right, the society need not have any concerns that the property is being alienated or otherwise encumbered. He relies upon an order passed by this court in the above writ petition in Civil Application No.2220 of 2012 on 12th September 2012. He submits that the very same objections were raised at that stage as well and the court, after a detailed reasoned order, came to the conclusion that the society is not prejudiced by virtue of the license proposed to be granted. The society's objections have all been recorded in the order of 12th September 2012 and have been dealt with for the reasons set out therein. According to Mr. Ankhad, his clients are willing to comply with the conditions imposed in the order dated 12th September 2012.

3. Prima facie, I do not find any reason for the society to object, if their interests are safeguarded, as provided in the order dated 12th September 2012. However, on behalf of the society, the learned counsel today submits that the situation is now different. The applicant-petitioner has ceased to be a member of the society. When asked to specify where in the affidavit-in-reply dated 15th September 2021, this contention has been taken up, he fairly submits that this contention has not been taken up.

4. In my view, there is nothing on record to suggest that the membership of the applicant-petitioner is no longer valid or that it has ceased to be a member of the society, as now suggested by the learned counsel on behalf of the society. In fact, the record does not indicate that any such resolution has

been passed so as to alter the position, which was obtained on 12th September 2012.

5. In these circumstances, Mr. Ankhad submits that the applicant-petitioner may be granted relief sought since the applicant is willing to comply with all the conditions imposed by this court in Civil Application No.2220 of 2012. In view thereof, I find no reason to decline the relief sought. Accordingly, I pass the following order :-

- (i) IA is allowed in terms of prayer clause (a), subject to the applicant-petitioner complying with all the conditions imposed vide order dated 12th September 2012 passed in Civil Application No.2220 of 2012.
- (ii) The applicant-petitioner shall make a fresh application for issuance of No Objection Certificate specifying therein name and address of the proposed licensee, as also his Permanent Account Number and Aadhar number of the proposed licensee and shall also make a statement in the application to be submitted to the society that the applicant is willing to comply with all the conditions set out in the order dated 12th September 2012 passed in Civil Application No.2220 of 2012.
- (iii) The applicant-petitioner shall also be liable to pay

non-occupancy charges and ensure that the licensee is in compliance with all bye-laws of the respondent no.1-society including by becoming a nominal member of the society.

- (iv) If such an application is made, the respondent no.1-society shall issue No Objection Certificate within two weeks therefrom.
- (v) IA is disposed in the above terms.

(A. K. MENON, J.)