

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6340 OF 2021**

Shantanu Apartment Condominium & Ors... Petitioners

Versus

Sudam Eknath Charwad & Ors. .. Respondents

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Mr.Shrivallabh Panchpor with Mr.Shantanu Joshi, Mr.Ankit Dhindale and Ms.Mahima Sharma for the Petitioners.

Mr.Ramiz Shaikh with Mr.Krishna for Respondent Nos.1 to 3.

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CORAM: BHARATI DANGRE, J.

DATED : 06th OCTOBER, 2021

P.C:-

1. The petitioners are aggrieved by the two orders; first being passed on 02/09/2021 below Exh.23 by the learned Civil Judge, Sr.Division, Pune in R.C.S. No.1061 of 2021 and a further order dated 22/09/2021 passed by the learned District Judge, Pune in Miscellaneous Civil Application No.196 of 2021, in which the order passed below Exh.23 was challenged.

2. Learned counsel for the petitioners, fairly states that the order dated 22/09/2021 is not a part of the Petition, since it was not made available. Today, learned counsel for the Respondents has filed an affidavit, appending the said order. The affidavit is taken on record. Learned counsel for the petitioners has also tendered a copy of the said order across the bar.

3. Heard the respective counsel.

The facts of the case which needs a brief reference is to the effect that petitioner No.1 is a Apartment Condominium, registered under the provisions of MOFA Act. It instituted a Civil suit in the Court of Civil Judge, Senior Division against the defendants wherein a declaration is sought to the effect that the defendants have no right to revise the plan sanctioned by the Pune Municipal Corporation on 21/10/2011 and the action of the defendants to revise the said plan is sought to be declared as illegal. A declaration is also sought that the defendants have no right to carry out the construction in the suit property, which would be in derogation of the sanction plan of the Municipal Corporation. Certain other ancillary reliefs are also sought on behalf of the plaintiffs, which include the flats owners as well as some of the defendants.

4. On an application seeking temporary injunction, being moved learned Civil Judge, Senior Division, Pune passed the following order on 14/07/2021 :

“Issue notice to Defendant No.1 to 4 to file say on this application.

Till filing say on this application parties to maintain Status Quo.

Till filing of say of Defendants I.P. Allowed.”

5. The defendants filed their affidavit, opposing the claim for interim injunction on 02/09/2021 alongwith their written statement. The matter was taken up for hearing on the same day and the plaintiffs prayed for extension of the status-quo order passed below Exh.5. Defendant Nos.1 to 3 opposed the same by stating that defendant No.4 is a formal party and defendant Nos.1 to 3 have already filed their written statement and say and the application for extension of status-quo order deserves a rejection.

On 02/09/2021, the Court passed the following order.

“Other side to say.

Parties to file their written arguments in Exh.5.”

Learned counsel appearing for the petitioners and respondents state that the next date of hearing on Exh.5 is scheduled on 18/10/2021.

6. Since the status-quo order was not extended, the petitioners approached the learned District Judge by filing an Appeal. The Appeal came to be dismissed on 22/09/2021 and the Appellate Court recorded that the question, which arose for determination in the Appeal is, whether the status quo order is required to be extended or not. Referring to a decision of the Bombay High Court, relied upon by the counsel for the appellants, the Court held that in Exh.5 itself, the plaintiffs have contended that construction activities are yet not started by the respondents and it is mere their apprehension that since the construction plan was revised, the construction may proceed. The argument advanced before the Appellate Court is

recorded to the effect that Exh.5 is ready for final arguments. The learned District Judge recorded that no emergent situation exists to exercise the jurisdiction by the Court and pass an order of status-quo in this Appeal. It upheld the order impugned and dismissed the Appeal.

7. Without touching the merits of the matter, what is manifest from the perusal of the record which is placed before me is that, till filing of the written statement, the learned Judge had passed an order directing the parties to maintain the status-quo. When the written statement is filed, the learned Judge did not apply his mind to the pleas in written statement, so as to disturb the order of status-quo. When the status-quo order was granted, the intention was to have the say of the other side before Exh.5 is heard. On 02/09/2021, when the written statement is filed alongwith the response of defendant Nos.1 to 3 opposing the application for extension of status-quo order, instead of proceeding to hear Exh.5, the learned Judge has directed submission of written arguments and now the matter is scheduled for hearing on 18/10/2021.

8. True it is that exigency may not have existed, as expressed by the Appellate Court, since mere receiving revised plan does not justify the apprehension that the construction is to begin, but, since the learned Judge has already passed an order of status-quo, there is no reason why it is vacated particularly when, the Court does not record that the order of status-quo stands vacated, as the defendants have objected to the continuation of the status-quo.

9. In such circumstances, to protect the subject matter of the suit, the continuation of the status-quo order would not have caused any harm, particularly when the learned Judge has listed Exh.5 for hearing on 18/10/2021.

The orders impugned do not justify its existence for the aforesaid reason. The learned Judge is directed to hear the parties on Exh.5 and take a reasoned view, whether to continue the order of status-quo granted on the first date of hearing, being 14/07/2021 or not.

10. With the aforesaid direction, the Writ Petition is allowed.

(SMT. BHARATI DANGRE, J.)