

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

**APPEAL FROM ORDER NO. 440 OF 2021
WITH
INTERIM APPLICATION (ST.) NO. 23062 OF 2021
WITH
INTERIM APPLICATION NO. 3409 OF 2021**

Hitesh R. Mody & Ors. ... Appellants
V/s.
Tushar Thakkar & Ors. ... Respondents

**WITH
APPEAL FROM ORDER NO. 488 OF 2021
WITH
INTERIM APPLICATION NO. 3688 OF 2021**

Monte Vista Residence Welfare Association ... Appellant
V/s.
Rajesh Sipahimalani & Ors. ... Respondents

Mr.Amogh Singh a/w. Ms.Manasi Tipnis i/b. Mhatre & Associates for Appellants in AO/440/2021 and for Respondents in AO/488/2021.
Mr.Vishal Kanade i/b. Mr.Virendra Pandey for Appellant in AO/488/2021.
Mr.A.M. Saraogi for Respondent No.1 in AO/440/2021.
Mr.Vishal Kanade i/b. Mr.Vatsal Shah for Respondent No.2 in AO/440/2021.

**CORAM : A.S. GADKARI, J.
DATE : 2nd December 2021.**

PC. :

1. In both the Appeals, interlocutory Order of grant of ad-interim relief dated 18th July 2020 passed in Draft Notice of Motion in S.C. Suit No. 1214 of 2020 (Stamp No. 3967 of 2020) is impugned.
2. Heard learned counsel for the respective parties. Perused record.
3. Mr.Kanade, learned counsel for Respondent No.2 in AO/440/2021-Original Defendant in S.C. Suit No. 1214 of 2020, on instructions from Mr.Avinash Rathod, Member of Interim Committee of Monte Vista Residence Welfare Association, submitted that, on 18th July 2020, the Respondent No.2/Original Defendant in AO/440/2021 did not authorize Advocate Mr.Sipahimalani to represent the Association. He further on instructions submitted that, Advocate Mr. Sipahimalani had on his own appeared in the matter and made certain statements before the Trial Court, which have been recorded in the impugned Order dated 18th July 2020.
4. At this stage Mr.Singh, learned counsel for Appellant in AO/440/2021 submitted that, Advocate Mr. Sipahimalani is also one of the member of Respondent No.2-Association and is having vested interest in governing power over the Respondent No.2-Association and therefore he in collusion with the Respondent No.1/Original Plaintiff made those statements before the Trial Court on 18th July 2020.

Mr.Saraogi, learned counsel for Respondent No.1 contradicts the said statements.

5. Record indicates that, the Appellants in Appeal No.440 of 2021 are not party defendant to the said Suit. As per record, Chamber Summons for impleading the Appellants in the said Suit is pending for adjudication before the Trial Court. The said Notice of Motion is also still pending for final adjudication.

6. In view thereof and after taking into consideration the controversy involved in the Appeal, it will be appropriate in the interest of justice that, the learned Judge of City Civil Court, Mumbai seized of Draft Notice of Motion in S.C. Suit No. 1214 of 2020 (Stamp No. 3967 of 2020) to hear and decide the said Motion so also the Chamber Summons for impleading the Appellants in Appeal No.440 of 2021, within a period of two weeks from the date of receipt of the present Order.

7. It is made clear that, this Court has not adjudicated the issue involved in the present Appeal impugning Order dated 18th July 2020 and the parties herein are at liberty to raise all their contentions before the Trial Court at the time of hearing of the said Notice of Motion.

8. Both the Appeals are disposed off in the aforesaid terms.

9. In view of disposal of Appeal Nos.440 of 2021 and 488 of 2021, Interim Application (St.) No. 23062 of 2021, Interim Application No. 3409 of 2021, Interim Application No.3688 of 2021 do not survive and are accordingly disposed off.

10. All the concerned to act on the basis of authenticated copy of this Order.

[A.S. GADKARI, J.]

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