

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 2369 OF 2020
IN
SUIT NO. 656 OF 2018**

Nirlon Employees Coop Hsg Soc Ltd	...Applicants
<i>In the matter between</i>	
Chhaya Chandrakant Dave & Anr	...Plaintiffs
<i>Versus</i>	
Shivam Parivar Developer Pvt Ltd & Ors	...Defendants

Mr JS Kini, *with Sapna Krishnappa, for the Applicants/Defendant No. 3.*

Mr Hitesh Dabhi, *for the Plaintiffs in Suit No. 907/2018 & Suit No. 930/2018.*

Mr Jitendra Kondekar, *Chairman; Jayantilal Meghji Shah, Secretary; and Dilip Jain, Treasurer on behalf of Nirlon Society are present in person.*

CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 9th July 2021

PC:-

1. Heard through video conferencing.
2. A number of suits are filed in regard to the same redevelopment, i.e. the redevelopment of the 3rd Defendant

society's building. I am told that the building has been demolished. The 1st Defendant developer expects to complete construction of the new building by early-2022 and to deliver possession to the 3rd Defendant Society and its members by then.

3. The present Suit No. 656 of 2018 is by two persons who have opposed the redevelopment. The suit seeks a variety of reliefs.

4. In the meantime, the 3rd Defendant Society has filed Interim Application No. 2369 of 2020. In this, a direction is sought against the 1st and 2nd Defendant ("the Developers") to pay an amount of over Rs 3 crores as transit rent arrears, the balance transport charges and the brokerage charges in arrears. The second prayer is for a direction against the Developers to continue paying monthly rentals to the members of the 3rd Defendant Society.

5. To begin with, I am not even satisfied that such an Interim Application by one defendant against the other is possible in a suit filed by some individual society members. A formal Third Party Notice is possible under our Rules and the corresponding amendment to the Code of Civil Procedure, 1908, but I do not see how such an Interim Application is maintainable. Neither the 3rd Defendant Society nor the Developers seem to have initiated any proceedings of their own. Nonetheless, in this Interim Application, the Developers and the 3rd Defendant Society seem to have arrived at Consent Terms that will dispose of the 3rd Defendant Society's Interim Application. I am inclined to accept these Consent Terms

because these are clearly in the interest of the 3rd Defendant's Society members.

6. The 2nd Plaintiff appears in person. The Plaintiff has filed no Interim Application as far as I can tell. There is no prejudice possible to the Plaintiffs in these Consent Terms. If they are members of the 3rd Defendant Society, they will receive the same benefits on the same terms and conditions as all other members of the Society, neither more nor less. Individual members cannot obstruct or hold up the development of the entire society. The law in this regard is no longer contentious.¹

7. The Consent Terms tendered by the society and the 1st Defendant has the approval of the General Body of the 3rd Defendant society at an appropriately convened Special General Body meeting held on 17th January 2021. The society has a total of **128 members**. 88 were present. The relevant resolutions were passed. The first resolution for upgrading the development project with increased FSI was passed by majority. The second resolution, authorizing execution of documents was passed unanimously. The present Consent Terms in fact referred in paragraph 6 to this project upgrading resolution, also contain the necessary undertakings by the developer to clear all society dues.

¹See: *Chirag Infra Projects Pvt Ltd v Vijay Jwala Coop Hsg Soc Ltd & Anr*, Arbitration Petition (L) No. 108 of 2021, decided on 12th March 2021 : 2021 SCC OnLine Bom 364 : (2021) 3 Bom CR 271; and *Westin Sankalp Developers v Ajay Sikandar Rana & Ors*, Commercial Arbitration Petition (L) NO. 221 of 2020 decided on 26th October 2020 : 2021 SCC OnLine Bom 421.

8. The Consent Terms are signed by the representatives of the 3rd Defendant Society and the Developers. These are taken on record and marked 'X' for identification with today's date.

9. I am satisfied that the Consent Terms are in order and are not contrary to law. I am also satisfied that the Consent Terms do not in any way prejudice the interest of the two Plaintiffs. The undertakings in the Consent Terms are accepted as undertakings to the Court.

10. There will be an order disposing of the 3rd Defendant's Interim Application No. 2369 of 2020 in terms of the Consent Terms. There will be no order as to costs.

11. A soft copy of the Consent Terms will be uploaded as the second order in Interim Application No. 2369 of 2020.

12. The Registry is to ensure that the hard copy of the signed Consent Terms is permanently retained on file as part of the record and is not sent for destruction in the ordinary course.

13. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)

Note: This order is modified as per order dated 27th July 2021 passed on a praecipe for speaking to the minutes. The corrections in paragraph 7 are shown in bold and italicize.