

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

APPEAL FROM ORDER NO. 134 OF 2022

Suresh Agarwal and Ors.

..Appellants

V/s.

The Nest Co-operative Flat Owners

Association and Ors.

..Respondents

Mr. Tushar Dahibawkar a/w Mr. Manish Bohra a/w Ms. Rita
Deshia i/b A.S. Khan and Asso. for the Appellants.

Mr. A.N. Narula i/b Jhangiani Narula and Asso. for the
Respondents.

CORAM : C.V. BHADANG, J.

DATE : 18 AUGUST 2022

P.C.

. This appeal can be disposed of on a short count. The Appellants are original defendants. The Appellants are challenging the order dated 22.12.2021 passed by the learned City Civil Court at Bombay in Notice of Motion No. 3345 of 2021 in S.C. Suit No. 1505 of 2020. By the impugned order, the learned City Civil Court partly allowed the Notice of Motion to the extent of prayer clause (d), while keeping the Notice of Motion pending so far as the other reliefs. Net result is that the Appellants are directed to handover the keys of the pump room to the Respondent-society.

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2. According to the Respondent-Society, the Appellants through their employees had broken open the lock of pump room on 06.12.2021.

3. Mr. Narulla, the learned counsel for the Respondents submits that the incident has been captured in video recording, which is produced along with affidavit and a pen drive containing the video recording.

4. The Appellants filed their reply and it was contended in paragraph 15 of the reply that the keys of the pump room are in possession of the Deponent. This was interpreted by the learned City Civil Court as keys being in possession of the Appellants.

5. The learned counsel for the Appellants submitted that the learned City Civil Court has misread the reply. He submits that the Appellants have referred to the Respondents as the Deponent.

6. Be that as it may. It is not necessary to go into disputed aspect inasmuch as the learned counsel for the Appellants submitted that on the same day of the passing of the impugned order, the keys of the pump room have been handed over to the Respondent-society. Although, the learned counsel for the Appellants disputes that the keys have been handed over, the fact remains that the Respondent society has obtained keys of the

pump room and can access the pump room on the basis of the keys.

7. In such circumstances, the appeal is disposed of keeping the contention of the Appellants open that the Appellants have not broken open the lock of the pump room and the contention that the Appellants were not in possession of the keys of the pump room.

8. The rest of the prayers in the Notice of Motion shall be decided on their own merits.

No order as to costs.

C.V. BHADANG, J.