

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

**APPEAL FROM ORDER NO. 590 OF 2022
WITH
CIVIL APPLICATION NO. 78 OF 2022
IN
APPEAL FROM ORDER NO. 590 OF 2022**

Nahar Builders Ltd. ...Appellant

V/s.

Yarrow Yucca Vinca Co. Op. Housing

Society Ltd. ...Respondent

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Mr. G. S. Godbole a/w. Ms. Sonal and Mr. Vinay Kumar i/b. FF
and Associates, for the Appellant.

Mr. Y. K. Tiwari a/w. Mr. Satyavan R. Dubey, Mr. Aditya
Asgavkar, Mr. Jitendra Tiwari and Mr. Raju Parkar, for the
Respondent.

CORAM : C.V. BHADANG, J.

DATE : 25 JULY 2022

P.C.

. The challenge in this appeal is to the order dated 29
January 2019 passed by the City Civil Court at Mumbai in Notice
of Motion No.1355/2018 in S.C. Suit No.1690/2018. By the
impugned order, the notice of motion filed by the Appellant /

Plaintiff stands dismissed.

2. I have heard the learned counsel for the parties. With the assistance of the learned counsel, I have gone through the record.

3. The Appellant has filed the aforesaid suit against the Respondent - Yarrow Yucca Vinca Co. Op. Housing Society Ltd. (Respondent-society) inter alia for a declaration that the Resolution passed by the Respondent-society in its General Body Meeting held in September 2017 in respect of the "Apex Body Expenditure" is illegal, void and bad in law. The Appellant had sought injunction restraining the Respondent-society from transferring or from issuing no objection certificates (NOCs) to its members for selling, assigning, letting or sub-letting of the flats / tenements in its building at Sector 12 Nahar's Amrit Shakti Chandivali, without obtaining no dues certificate from the Appellant in respect of such flats. The Appellant had sought injunction restraining the Respondent-society from enforcing the Resolutions passed in the Annual General Body Meeting held in September 2017 in respect of the Apex Body Expenditure. It may be mentioned that prayer clause (c) in the plaint was deleted.

4. The Appellant filed a notice of motion seeking an order restraining the Respondent-society from issuing the no objection certificate in favour of its members for transfer, assignment, letting or sub-letting of the tenements.

5. The notice of motion was resisted on behalf of the Respondent-society claiming that the bye-laws or the terms of the agreements / deeds do not require the NOC of the society for such transfer / alienation. It was contended that the dispute is essentially about recovery of 'Apex Body Expenditure' which are in the nature of charges / expenses incurred by the Appellant for maintenance of the common areas / open space in Sector No.12. It is submitted that there is a dispute about such payment of the charges / expenditure and for which the Appellant cannot seek an injunction restraining the society from issuing NOCs. A contention was also raised based on Section 154 of the Maharashtra Co-operative Societies Act claiming that the suit is not maintainable in the absence of notice under Section 154 of the said Act.

6. The learned City Civil Court although came to the conclusion that the Appellant has established a prima facie case and the balance of convenience was in favour of the Appellant, the Court found that the requirement of irreparable loss, in the event of refusal of interim relief, is not made out. In that premise, the injunction has been refused.

7. I have heard the learned counsel for the parties. With the assistance of the learned counsel for the parties, I have gone through the record.

8. It is submitted by Mr. Godbole, the learned counsel for the Appellant that the society was not justified in passing a Resolution that individual invoices cannot be raised on the members towards the Apex Body Expenditure. It is submitted that the members of the Respondent-society are enjoying the common space / utilities and are refusing to pay the amount towards maintenance of the same. It is submitted that in the event the flats / tenements are transferred in favour of third parties, the same would create difficulty / complications in the matter of recovery of such expenses / charges. The learned counsel has pointed out Clause 42 of the agreement of sale executed in favour of the members, in order to submit that the Appellant – Builders have a first lien / charge on the said premises agreed to be acquired by the flat purchasers in respect of any amount payable under the terms and conditions of the agreement. He therefore submitted that the members of the Respondent-society cannot refuse to pay such charges / expenses as it was envisaged that an Apex Body / Federation should be formed of all the societies for maintenance of the common areas / facilities / utilities.

9. The learned counsel for the Respondent-society has submitted that there is no provision under which the society can insist for such no objection certificate. It is pointed out that the Appellant has filed 92 separate suits for recovery of the amount

in which similar injunction, for has been refused and which order has attained finality, for want of challenge. It is pointed out that the trial Court has observed that the transfer, if any, shall be subject to the outcome of the suit, which sufficiently takes care of the interest of the Appellant.

10. I have considered the submissions made.

11. The dispute is about the expenditure incurred by the Appellant for maintenance of the common areas / facilities / utilities in Sector 12. Although the copy of the Resolution which is subject matter of challenge in this suit, is not produced, the learned counsel for the Appellant has pointed out a communication dated 7 November 2017 from the Respondent-society to the Appellant which makes a reference to the Resolution passed in the Annual General Meeting of the society. The members had resolved that the Appellant cannot enter into any direct or individual communication with the members, nor can raise any individual invoices on the members. It was also resolved that the society was proposing to “collectively settle any federation dues”. Thus, it can be seen that the Resolution is only about the society requiring the Appellant not to raise any individual invoices towards the Apex Body Expenditure and/or from entering into any correspondence individually with the members. It is difficult to see as to how the relief of injunction

restraining the Respondent from issuing NOCs for transfer can be said to be a relief which is in aid of the relief claimed in the suit. That apart, para 42 of the agreement to sale on which reliance is placed on behalf of the Appellant shows that the Appellant has a first lien / charge which would run with the property namely the flats / tenements and the enforcement of the lien may not be affected by any transfer of such flats / tenements. The society has pointed out that there are no bye-law which requires the members to obtain a NOC before transfer of any flat / tenement. In any event, the dispute is essentially monetary in nature for recovery of the Apex Body Expenditure and the Appellant cannot enforce its recovery by restraining the society from issuing NOCs for transfer of the flats / tenements.

12. Thus, in my considered view, the trial Court was not even justified in finding that the Appellant has established a prima facie case or balance of convenience being in favour of the Appellant. At any rate, the dispute being in the nature of a monetary dispute, no irreparable loss would result if the injunction is refused. The trial Court has observed that any such transfer would be subject to the outcome of the civil suit. Looked from any angle, no case for interference is made out in the order rejecting the interim injunction. The appeal is without any merit and is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.