

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.379 OF 2022
ALONG WITH
INTERIM APPLICATION NO.2617 OF 2022

M/s. H.S. Construction] ... Appellant

Vs.

Mohite Realtors & Anr.] ... Respondents

ALONG WITH
APPEAL FROM ORDER NO.380 OF 2022
ALONG WITH
INTERIM APPLICATION NO.2619 OF 2022

Pantnagar Sai Bhavan Co-op. Housing]
Society Ltd.] ... Appellant

Vs.

Mohite Realtors] ... Respondent

...

Mr. Ashish Kamath with Mr. Yatin Malvankar, Mr. Harsh Murjani
i/b Mr. Digvijay Sarangdhar for the appellant in Appeal from
Order No.379 of 2022.

Mr. Prasad Dani, senior counsel i/b Bhosle & Co. for the appellant in Appeal from Order No.380 of 2022.

Mr. Shanay Shah with Mr. Mahesh Chitnis i/b Chitnis Vaithy & Co. for respondent No.1 in Appeal from Order No.379 of 2022 and for sole respondent in Appeal from Order No.380 of 2022.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 21ST APRIL, 2022.

P.C. :-

1. These two appeals involve three players, one being the Co-operative Housing Society and the two developers i.e. M/s. Mohite Realtors and M/s. H.S. Constructions. The Society, whose building is under development, is alleged to have issued two documents, one being an allotment letter to redevelop the suit property and the other, a consent letter given by some of its members in favour of M/s. Mohite Realtors. Pertinent to note that the Society comprises of 32 members and the land was allotted to it by MHADA and, necessarily, the development was to fall within the purview of rules and regulations prescribed by MHADA.

2. The Society, through some of its members and, to be specific 24, terminated their consent in the letter of allotment on 28/08/2021 and this constrained M/s. Mohite Realtors to file a civil suit seeking specific performance and a direction to the Society to enter into a development agreement with them.

3. A notice of motion came to be filed in the said suit vide Notice of Motion No.964 of 2021 and the motion specifically sought a relief, that it shall be declared that the plaintiff has been validly appointed as the Developer by the defendant-Society vide letter of appointment dated 22/03/2021 issued by the members of the Managing Committee of the Society, by passing unanimous Resolution dated 21/03/2021. A direction was also sought to execute and register such other documents and writings, including a registered development agreement, power of attorney, etc.

It is not in dispute that this notice of motion is still pending for adjudication before the learned Judge of the Bombay City Civil Court.

4. Opposing the notice of motion, the Society filed a reply pointing out that a new Developer is already appointed viz. M/s. H.S. Constructions and even an agreement for development was also executed. However, since the notice of motion is pending, the specific stand of the respective parties was not accounted for.

5. Mr. Dani, the learned senior counsel makes a specific statement that the building has been demolished and all the 32 occupants have vacated the premises. This statement is contradicted by the learned counsel appearing for the erstwhile developer, M/s. Mohite Realtors, by submitting that only some portion of the building is demolished, but the structure is standing

on the land, as on date.

A chamber summons came to be filed in the suit by the plaintiff M/s. Mohite Realtors, for impleadment of new developer M/s. H.S. Constructions in the suit and even this chamber summons is not yet decided and is scheduled for hearing, today.

6. Thereafter, a draft notice of motion came to be filed by M/s. Mohite Realtors on 11/04/2022 seeking a relief that pending the hearing and final disposal of the chamber summons, the defendant-Society and the new Developers M/s. H.S. Constructions be directed not to take any steps in furtherance of the development agreement dated 17/01/2022, allegedly executed between the defendant-Society with the new Developer and to maintain status quo in respect of the suit property.

7. The impugned order is passed on the said notice of motion and it reads thus:

*“By Precipe
Matter pertains to C.R. No.01.
Adv Rohit Shetty for plff present.
He tendered draft NM. Leave to register granted.
Copy given to Adv for deft.
He also tendered affidavit of service of CS on the
respondent. t.o.r.
Adv Praful Valvi for deft present.
Both parties to maintain status quo in respect of suit
property till next date.
Authenticated copy given to Adv for deft.
Matter already Adj to 21/04/2022.”*

8. Heard the respective learned counsel, who are either supporting or opposing the said order.

Mr. Dani, the learned senior counsel strongly opposed passing of the above order and he is highly critical about the manner and states that the order of *status-quo* is passed in a perfunctory manner, without considering the merits of the matter and a *prima facie* case. He would submit that the earlier notice of motion has not even been referred to by the learned Judge and, straight away, an order of *status-quo* is granted in respect of the suit property, without ascertaining its actual position.

9. The learned counsel for the plaintiff-Developer submits that since the regular court was not available, the in-charge court directed the parties to maintain *status-quo*, which in any way, is not detrimental to the rights of the parties.

10. Upon considering the impugned order and since it is informed that the notice of motion is now assigned to the regular court and is scheduled for hearing along with the chamber summons, I deem it appropriate that instead of interfering with the impugned order at this stage, it would be in the interest of all the parties, that they are relegated to the City Civil Court at Bombay to hear the draft notice of motion and after affording an opportunity of hearing to all the three parties, including M/s. H.S. Constructions, it is open to the learned Judge to either continue with the said order of *status-quo* or vacate it. However, the leaned

Judge must necessarily pass a reasoned order to that effect. This would protect the interest of all the parties and it is also directed that even if the notice of motion is postponed for further hearing, the continuation of the order of *status-quo* or its vacation, shall depend upon the arguments advanced before the learned Judge.

With the aforesaid direction, both the appeal from orders are disposed off.

Needless to state that except narrating the sequence of events, I have not gone into the merits of the matter.

11. In view of the disposal of the appeals, the pending applications do not survive and are disposed off as such.

[SMT. BHARATI DANGRE, J.]