

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 71 OF 2023

with

INTERIM APPLICATION NO.881 OF 2023

Pradeep Trimbak Dhake

..Appellant

Vs.

The Chairman/Secretary, Andheri Dhake
Colony C.H.S.L. & Ors.

...Respondents

Mr.Vivek Pandey with Ridhima Mangaonkar and Shyam Tripathi, for the Appellant.

Mr.Abhijeet P. Kulkarni, for Respondent No.1.

Mr.Anand M. Shirali, Chairman, Andheri Dhake Colony CHS-respondent No.1 present.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 1, 2023

P.C.:

1. Not on board. Upon mentioning taken on board on a praecipe as moved on behalf of the appellant.
2. Heard learned Counsel for the appellant/plaintiff and learned Counsel for the respondent no.1/society. The order impugned in this appeal is an order dated 16 January 2023 passed by the learned Judge, City Civil Court at Bombay on Notice Of Motion No.3969 of 2022 in S.C.Suit No.2814 of 2022 as filed by the appellant – plaintiff, whereby the notice of motion has been dismissed in terms of the following order:-

“ORDER

- 1) Notice OF Motion No.3969 OF 2022 is hereby dismissed.

- 2) However, defendant is directed that in case, he opened the tender, he would not act upon and register agreement with developer till 15 days after acceptance of bid for development.
- 3) Notice of Motion No.3969 of 2022 stands disposed of accordingly.”

3. After the proceedings were heard for some time, the Court’s attention was drawn to a pending litigation between the parties which is subject matter of First Appeal No.466 of 2017 filed by the respondent-society before this Court. In such proceedings, on a Civil Application No.243 of 2019 a Co-ordinate Bench of this Court on 13 March 2019 has passed the following order:

“ After the matter is heard at some length, it is agreed between learned Counsel for the parties that the parties may work out an acceptable adhoc interim order concerning the treatment be given to the suit terrace and its area in the redevelopment proposal presently undertaken by Respondent No.1 to the civil applications (original Appellants in the first appeal). Since, presently, the matter of redevelopment is under consideration of Respondent No.1 herein and negotiations are being conducted with a developer in that respect, Respondent No.1 Society may include the subject of treatment to be accorded to the suit terrace in its discussion with the developer. Any solution worked out in this behalf, as between the society and the developer, shall be communicated to the Applicant herein. Neither party shall act on such decision in respect to the suit terrace for a period of three weeks of its communication to the Applicant. All rights and contentions of parties on merits are kept open. The civil applications to come up for hearing on 10 April 2019. This order shall, in the meanwhile, operate as an ad-interim order in the civil applications.”

4. Mr.Kulkarni, learned Counsel for the respondent/society, on instructions, states that his client shall abide by the directions of the Court in the above order, and in the event there is any development, the same shall be communicated to the appellant/plaintiff so that the appellant/plaintiff shall take further appropriate course of action by

moving an application in the pending appeal. Such submission as made on behalf of the respondent-society satisfies the interest of the appellant/plaintiff as stated by the learned Counsel for the appellant/plaintiff. Accordingly, the appeal would not warrant any further adjudication.

5. The appeal is accordingly disposed of accepting the statement of Mr.Kulkarni, as made on behalf of respondent – Society on instructions of Mr.Anand M. Shirali, Chairman of Respondent No.1-Society, who is stated to be present in the Court.

6. By consent of the parties, S.C. Suit No.2814 of 2022 pending before the City Civil Court, Bombay is disposed of leaving the parties to agitate their respective contentions in the pending First Appeal.

7. Office to intimate to the Registrar, City Civil Court, Bombay in regard to disposal of the S.C. Suit No.2814 of 2022.

8. The appeal is accordingly disposed of in terms of the above observations. No costs.

9. As appeal itself is disposed of, noting survives in the pending interim application, the same is disposed of.

[G.S. KULKARNI, J.]