

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

**INTERIM APPLICATION NO.1342 OF 2023
IN
FIRST APPEAL NO. 236 OF 2023
IN
SUIT NO. 10640 OF 1991
(HIGH COURT SUIT NO. 3772 OF 1991)**

Golden Meadows Properties (Pvt. Ltd.) ...Applicant

In the matter between :

Golden Meadows Properties (Pvt. Ltd.) ...Appellant
vs. (Original Defendant No.1)
Hansa Holdings And Trading
Co. Pvt. Ltd. And Ors. ...Respondents

**WITH
INTERIM APPLICATION NO.15051 OF 2023
IN
FIRST APPEAL NO. 236 OF 2023
IN
SUIT NO. 10640 OF 1991**

Hansa Holdings And Trading
Co. Pvt. Ltd. And Ors. ...Applicant

In the matter between :

Golden Meadows Properties (Pvt. Ltd.) ...Appellant
vs. (Original Defendant No.1)
Hansa Holdings And Trading
Co. Pvt. Ltd. And Ors. ...Respondents

Mr. Vinit Naik, Senior Counsel a/w Mr. Vishal Kanade a/w Ms. Pearl Majithia i/b FZB Associates for Applicants in IA 15051 of 2023 and for Respondent No.1 in FA 236 of 2023.

Mr. Sukand Kulkarni with Mrs. Chhaya Parab i/b M/s. Shah & Sanghavi for Appellant in FA 236 of 2023 and for Respondent No.1 in IA 15051 of 2023.

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 3RD NOVEMBER, 2023
PRONOUNCED ON : 1ST DECEMBER, 2023

P. C. :

1. Interim Application No. 1342 of 2023 is filed by Original Defendant No.1/Appellant for stay to the Judgment and Decree dated 9th January, 2023, passed by City Civil Court, Greater Mumbai, in Suit No. 640 of 1991 filed by Plaintiff No.1/Respondent. Appeal is admitted on 14th March, 2023 and considering the fact that there was no interim relief granted in favour of plaintiff during the pendency of suit, ad-interim relief staying the execution implementation and operation of the impugned Judgment and Decree granted in favour of Appellant vide Order dated 14th February, 2023 is continued to operate until further Orders.

Interim Application No.15051 of 2023 is filed by Plaintiff No.1 for restraining the Appellant/occupants of Ambuj Annexe Building from obstructing the occupants of Ambuj Main Building for enjoyment of the amenities constructed at the

ground floor of Ambuj Annexe Building.

2. Original Plaintiffs filed suit for declaration that Indenture of Conveyance dated 16th February, 1991 is null and void and to cancel the said Indenture. Prayer for permanent and mandatory injunction demolishing the additional construction constructed by Defendant No.1 was also made. Trial Court after hearing the parties partly decreed the suit, thereby restraining defendant No.1, their agents, servant or any person claiming on their behalf from obstructing the occupants of Ambuj Main Building in the enjoyment of the amenities constructed in the common area of the ground floor of Ambuj Annexe Building, without following due process of law.

3. Heard Mr. Vinit Naik, learned Senior Counsel for Appellant/Defendant No.1 and Mr. Vishal Kanade learned Advocate for Applicant.

4. Defendant No.1 in written statement has made following averments ;

“The Plaintiffs are still having access to the amenities on the ground floor and there is no restrain to them.... The residents of Ambuj Building and Ambuj Annexe are provided with the water from the suction

tank with the help of pump which is maintained in good order and condition by defendant No.1. Also the servant of the occupants of main buildings are having access to the servant room. Their right and enjoyment is not restrained or denied by erection of the Gate on the entrance of Ambuj Annexe.

5. On Perusal of Indenture of Conveyance dated 16th February, 1991 it prima-facie appears that, amenities on the ground floor of Ambuj Annexe Building of common areas are for the benefit of respective owners of the flats constructed on the land of Ambuj Limited. Residents of Ambuj Main Building are entitled to enjoy the amenities on the ground floor of Ambuj Annexe Building.

6. In the Judgment impugned in the First Appeal, Trial Court has held ;

“Admittedly the ground floor area is consisting of the amenities of the water tank suction, pump house, servant room.

It also seems that, the amenities on the ground floor of the Ambuj Annexe Building and common area and benefit of the same are to be enjoyed by all the

respective owners of the flat constructed on the land of whole Ambuj Limited.

It therefore seems that even occupants of Ambuj Main Building are entitled for the said amenities erected on the ground floor. There is no dispute that, plaintiffs are also the co-owners/tenants in common to the extent of the area purchased by them."

7. From the photographs annexed with the Interim Application, it appears that repairing work is being carried out at Ambuj Annexe Building. Photographs also indicate that certain articles are stored in the common W.C. due to which, it can not be used. Therefore there appears substance in the contention of original Plaintiff that they are prevented from using the common area and because of the dumping of articles they are unable to utilize common W.C. at the ground floor of Ambuj Annexe Building.

8. Prima-facie it is clear that Respondent No.1/plaintiff and occupants of Ambuj Main Building are entitled to access the common area and the facilities on the ground floor of Ambuj Annexe Building. Plaintiff has made out a prima-facie case and

balance of convenience lies in favour of plaintiff. Plaintiff would suffer irreparable loss if the injunction granted in favour of Defendant No.1 is continued. If the ad-interim relief is vacated and plaintiff and/or their servants, workers are permitted to utilize the common area including the common W.C., no prejudice is likely to be caused to the Appellant/Defendant No.1.

9. For the aforestated reasons and since the Trial Court has partly allowed the suit filed by Plaintiffs, though since the year 1991 Plaintiffs and occupants of Ambuj Main Building were not permitted to utilize the common area and amenities at the ground floor of Ambuj Anexe Building, this Court is inclined to vacate ad-interim relief granted in favour of Appellant. Hence the following Order :

ORDER

- (i) Interim Application No. 1342 of 2023 is dismissed. Ad-interim relief granted in favour of Appellant vide Order dated 14th February, 2023 and continued by Order dated 14th March, 2023 stands vacated.
- (ii) Interim Application No. 15051 of 2023 is allowed to the above extent.

[NITIN B. SURYAWANSHI, J.]

At this stage, learned Advocate appearing for Appellant in First Appeal No. 236 of 2023 seeks stay of this Order.

This Order shall remain stayed for a period of two weeks from today.

[NITIN B. SURYAWANSHI, J.]

Digitally
signed by
CHAITANYA
ASHOK
JADHAV
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