

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

**CIVIL APPLICATION NO.980 OF 2017
IN
FIRST APPEAL NO.561 OF 2017**

Mohammed Wasim Ansari ... Applicant
V/s.
Malkani Construction Company ... Respondent

Mr. Ravindra Vishu Laxmi Sankpal i/b R.V. Sankpal and Associates for the applicant.

Mr. Bilal Qureshi i/b Zaid Ansari and Associates for respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 16, 2023

P.C.:

1. The appeal arises out of Judgment and Decree passed by learned Judge, City Civil Court, Dindoshi, Mumbai in Suit No.2756 of 2013 on 8th September, 2015 dismissing the suit for want of jurisdiction, treating the suit filed to enforce right arising out of the provisions of The Maharashtra Ownership of Flats (Regulation of the Promotion of Construction Sale, Management and Transfer) Act, 1963. The suit proceeded ex parte and the defendant had no opportunity to file written statement.

2. Both the parties, on instructions, state that the appeal can be remanded to the City Civil Court, Dindoshi, Mumbai for decision on merits.

3. In view of the consent of both the parties. I, pass the

following order :-

4. The Judgment and Decree passed by learned Judge, City Civil Court, Dindoshi, Mumbai in Suit No.2756 of 2013 on 8th September, 2015 is quashed and set aside.
5. Suit No.2756 of 2013 is restored to the file before learned Judge City Civil Court, Dindoshi, Mumbai. He shall decide the suit on its own merits.
6. Considering the facts of the case, the respondent is permitted to file written statement. On filing of written statement by the respondent, the City Civil Court, Dindoshi, Mumbai shall decide the suit in accordance with law.
7. Considering the pendency of the Suit from the year 2013, the City Civil Court, Dindoshi, Mumbai is directed to decide the suit within One (1) year from the date of appearance of the parties.
8. The parties shall appear before City Civil Court, Dindoshi, Mumbai on **23rd January, 2023**.
9. The First Appeal stands dismissed. No costs.
10. In view of the dismissal of the appeal the Civil Application does not survive and stands disposed of.

(AMIT BORKAR, J.)