

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2541 OF 2022
IN
SECOND APPEAL NO. 353 OF 2022**

M/s. Harmony Lifestyle Structures Private

Limited, Mumbai Thr. Its Director Mr.

Deepak Jain

...Applicant/Appellant

Versus

Hiren Venilal Sevak, Partner of M/s. Build

Well-Developers and ors.

...Respondents

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Mr. Y. S. Jahagirdar, Senior Advocate a/w Mr. Pradeep Thorat a/w Mr. Deepak Chitnis a/w Ms. Simran Jaggi a/w Ms. Rehah Gojaria i/b Deepak Chitnis-Chiparikar and Company for the Applicant/Appellant.

Mr. Vineet Naik, Senior Advocate i/b Mr. Govind Solanke for the Respondent No. 1.

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CORAM : N.R. BORKAR, J.

DATED : 21 AUGUST 2023

P.C. :-

The respondent No. 1 herein had filed a suit for specific performance of agreement to sell dated 11 January 1988 in respect of properties bearing survey Nos. 62/2 and 62/6 within the corporation limits of Thane Municipal Corporation. The suit was dismissed. The appeal filed by the respondent before the District Court came to be allowed by Judgment and decree dated 15 January 2022.

2. The applicant, who claims to be bonafide purchaser of part of the suit property by this application seeks leave to file second appeal against the judgment and decree of the appellate Court.

3. I have heard the learned senior counsel for the parties.

4. The learned senior counsel for the respondent No. 1 submits that the applicant had purchased the part of the suit property after registration of notice of lis-pendens and though, the fact of pendency of appeal was clearly mentioned in the title certificate issued by the Advocate for the applicant. It is submitted that in the entire application the applicant has not contented that the applicant was not aware of the pendency of the appeal. It is submitted that the applicant still thought it fit not to file application before the first appellate Court. It is submitted that the applicant has thus no right or locus to file a second appeal.

5. There is already one more second appeal pending on the file of this Court filed by original defendant Nos. 1 to 10. In that view of the matter and to avoid multiplicity of judicial proceedings, it would be appropriate to grant leave as sought. Ordered accordingly. Interim Application is disposed of.

(N.R. BORKAR, J.)