

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.750 OF 2022
WITH
INTERIM APPLICATION NO. 16713 OF 2022

1. Anmol Pride Co-Op. Housing Society Ltd.
a Society registered under the Maharashtra
Cooperative Societies Act, 1960, having society
address at Excel Estate Compound, Govindji
Shroff Marg, Goregaon (West), Mumbai 400 062.
2. Mr. Bharat Kothari
Age : 51,
An Indian Inhabitant, Adult,
having address at
Anmol Pride CHS, Excel Excel Estate
Compound, Govindji Shroff Marg,
Goregaon (West), Mumbai 400 062.
3. Mr. Atulya Kumar Singh
Age : 58
An Indian Inhabitant, Adult,
having address at
Anmol Pride CHS, Excel Excel Estate
Compound, Govindji Shroff Marg,
Goregaon (West), Mumbai 400 062.
4. Mr. Niranjan Govindkar
Age : 42
An Indian Inhabitant, Adult,
having address at Flat No.2001,
Anmol Pride CHS, Excel Excel Estate
Compound, Govindji Shroff Marg,
Goregaon (West), Mumbai 400 062.

... Appellants/Original
Defendants

Versus

Anmol Prestige Co-Op. Housing Society Ltd.
 a Society registered under the Maharashtra
 Cooperative Societies Act, 1960
 Through its Authorized representative,
 Mr. Prem Prakash Saboo,
 having society address at Excel Estate Compound,
 S.V. Road, Opp. Petrol Pump,
 Goregaon (West), Mumbai 400 062.

... Respondent/Original
 Plaintiff

...

Mr. G.S. Godbole, Senior Advocate a/w Mr. Vishal Kanade, Mr. Vishal Kothari i/by Ms. Ketki Gadkari, for Appellants/Original Defendants.

Mr. Nikhil Sakhardande, Senior Advocate i/by Mr. Aditya Khare, for Respondent/Original Plaintiff.

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CORAM : SANDEEP V. MARNE, J.
RESERVED ON : SEPTEMBER 08, 2023
PRONOUNCED ON : SEPTEMBER 21, 2023

JUDGMENT :

1. By this Appeal, Appellant-Society challenges order dated 30 April 2022 passed by City Civil Court partly allowing Notice of Motion No.1059 of 2022 filed by Respondent-Society thereby granting temporary injunction restraining Appellant-Society from obstructing access and use of various common amenities such as play area for children with equipment on podium, club house with gymnasium and swimming pool and basement parking to the members of Respondent-Society and their family members.

2. Two buildings namely Anmol Pride and Anmol Prestige have been constructed by the developer on a common plot of land. Two distinct cooperative societies namely Anmol Pride Co-Op. Housing Society Ltd. and Anmol Prestige Co-Op. Housing Society Ltd. have been formed by flat occupiers of the respective buildings. For the sake of convenience, Appellant/Defendant Society is referred as 'Pride Society' and Respondent/Plaintiff Society is referred as 'Prestige Society.' The two societies are at loggerheads with regards to use of various common amenities and parking spaces, which has led to filing of Short Cause Suit No.702 of 2022 by Prestige Society seeking various declaratory and injunctive reliefs against Pride Society. The suit is triggered by letter dated 8 March 2022 issued by Appellant-Pride Society thereby putting prohibition on access and use of common amenities and parking facilities in the basement to members of Plaintiff-Prestige Society.

3. By order dated 30 April 2022, the City Civil Court has proceeded to partly allow the Notice of Motion filed by Plaintiff-Prestige Society and has enjoined Defendant-Pride Society from obstructing access and use of common amenities such as play area for children with equipment on podium, club house with gymnasium, swimming pool and basement parking to the members of Plaintiff-Prestige Society.

4. I have heard Mr. Godbole, the learned senior advocate assisted by Mr. Kanade for Appellant-Pride Society and Mr. Sakhardande, the learned senior advocate appearing for Respondent-Prestige Society.

5. The order of temporary injunction granted by the City Civil Court reads thus:

ORDER

"1. Notice of Motion No.1059/2022 is partly made absolute in terms of prayer clause (ba).

2. Defendants and/or their agents, representative/s or any persons/s claiming/acting on their behalf are restrained from obstructing impeding or stopping restoration of regular ingress, egress, access and use of common amenities i.e. play area for children with equipment on podium, Club house with Gymnasium and swimming pool (included as items Nos.20 & 23 on Annexures G to the Sale Agreement at Exh.A) and basement parking by members of the plaintiff society alongwith their family members, residents and or/or their agents and representatives in any manner whatsoever, without following due process of law.

3. Plaintiff society to tender cheque of Rs.7,00,000/- (Rupees Seven Lakhs Only) to the defendant No.1 Society to be adjusted against the admitted dues. If defendants society declines to accept the amount of Rs.7,00,000/- (Rupees Seven Lakhs Only), the amount shall be deposited in the Court.

4. Notice of Motion No.1194/2022 is dismissed.

5. Cost shall be cost in cause.

6. Notice of Motion Nos.1059/2022 and 1194/2022 are disposed of."

6. Thus, the order of injunction granted against Appellant-Pride Society is in respect of play area for children with equipment on podium, club

house with gymnasium and swimming pool and basement parking. Mr. Godbole has fairly conceded that the Appellant-Pride Society does not have much objection to use of common amenities such as play area for children with equipment on podium, club house with gymnasium and swimming pool by the members of Respondent-Prestige Society, subject to sharing the costs of operations and maintenance. Mr. Sakhardande also does not have much objection to sharing the costs of operations and maintenance. Though there is some degree of debate between the two societies about the exact amount which Respondent-Prestige Society should share, I will come to that aspect little later.

7. The main bone of contention between the parties relate to the basement parking being used by any member of Prestige Society. It is Pride Society's case that the basement parking is a part of Pride building and therefore no member of Prestige Society can be permitted to park any of their cars in such basement. On the contrary it is the case of Prestige Society that basement is a part of common amenity and therefore both the Societies should have equal rights to park the cars of their members in the basement.

8. Mr. Godbole has placed strenuous reliance on the admission given by the learned Advocate appearing for Prestige Society before the City Civil Court that basement parking is not a common amenity. He lays stress on

following submission recorded by the City Civil Court in Para 40 of its order which reads thus:

" **Ld. Advocate for the plaintiff fairly submitted that basement parking badminton Court and steam sauna bathroom are not common amenities.** There is common compound wall and club house used by both the societies. There is common layout and common recreation garden, each and every members is proportionate owner. They are enjoying the common amenities since last eight years. Plaintiff has annexed agreement of both the societies. The builder has issued allotment letter in the name of the individual members in respect of the car parking. The members of the plaintiff society are paying maintenance for common area. They have produced the bills vide page No. 243 of the plaint. They are also paying the maintenance charges. Admittedly, there was writing between both the societies about the share of the expenditure. However, defendants without following due process of law are trying to block the access of the plaintiff society to the common amenities, therefore, plaintiff society has approached this Court. the denial of the common amenities can be seen from the photographs annexed to the plaint. "

(emphasis supplied)

9. It is by relying on the above admission that Mr. Godbole would contend that Prestige Society had not made out any *prima facie* case for grant of injunction *qua* its relief for basement parking. He would criticise the order of City Civil Court granting injunction *qua* basement parking despite specific admission by Advocate of Prestige Society that basement parking is not a part of common amenity.

10. Mr. Godbole has also invited my attention to the notice dated 14 March 2022 addressed on behalf of Prestige Society, in which following statements were made:

“ All the individual flat purchasers’ agreement make it absolutely clear that the club house, comprising of gymnasium and swimming pool, is a common amenity to both the societies. Whereas, the parking spaces are to be shared according to individual agreements.”.....

11. He would submit that even in the said notice dated 14 March 2022, Prestige Society specifically admitted that basement parking is not a part of common amenity. I have also been taken through the sanctioned plan to demonstrate that two buildings are separated by 12.20 meter wide-road and that the basement forms part of Pride Society's building.

12. On the contrary, Mr. Sakhardande would submit that the basement parking has also been treated as a part of common amenity. That the developer has allotted parking spaces in the basement to flat purchasers of both the societies. That such allotment would clearly indicate that basement is also a part of common amenity. Mr. Sakhardande has contested Mr. Godbole's claim that the basement is a part of Pride Society's building.

13. There is no dispute to the position that the basement has total 68 parking spaces. It appears that the developer has allotted 14 parking spaces to flat purchasers in Prestige Society and 11 Parking spaces to flat purchasers in Pride Society. The balance 43 parking spaces have remained un-allotted. It appears that flats in the buildings have been in occupation for a substantial

period of time and parking of cars at least by 14 members owning flats in Prestige Society were not objected to by Pride Society until the disputes erupted between the two societies. The City Civil Court, by its order of temporary injunction, has enjoined Pride Society from not obstructing members of Prestige Society from parking their cars in the basement. Even though there is dispute between the two societies as to whether basement is a part of common amenity or not, Pride Society does not dispute the position that 14 car parking spaces have been allotted by developer to the flat purchasers of the Prestige Society. Even the notice addressed by Prestige Society on 14 March 2022 relied upon by Mr. Godbole contains a specific statement that '*whereas, the parking spaces are to be shared according to individual agreement*'. Thus, it cannot be said that there has been any admission on the part of Prestige Society that the basement parking belongs exclusively to the Pride Society. Whether any right can be exercised by a member on the basis of parking allotments made by the developer can be decided while deciding the Suit. At this juncture, the limited issue that needs to be decided is whether Plaintiff-Society has made out any case for grant of temporary injunction during pendency of the Suit. From the factum of the Developer allotting car parking spaces to flat purchasers of Prestige Building in the

basement and the Pride Society permitting them to park their cars in the basement would *prima facie* indicate that the basement may not be for exclusive use for use by members of Pride society alone. At the same time, it is Prestige Society's case that parking in the basement would be governed by allotments made by the developer.

14. In my view therefore, by way of interim arrangement during pendency of the suit, only 14 members of Prestige Society, who are allotted parking spaces by developer, can be allowed to park their cars in the basement. The remaining car parking spaces shall be used exclusively by the members of Pride Society. This would be a workable arrangement till final disposal of the suit.

15. The next controversy is about sharing of cost of operations and maintenance of various common amenities spaces. Mr. Godbole has placed on record cost allocation statement stating that Prestige Society must contribute an amount of Rs.93,248/- every month for use of various common amenities. On the contrary, Mr. Sakhardande would submit that as per the past understanding, Prestige Society was liable to pay monthly contribution of only Rs.35,000/-. He would further invite my attention to the previous cost allocation statement raised by Pride Society, under which total amount of Rs. 73,83,018/- was demanded towards contribution for the period from 1

January 2013 to 31 March 2022 (111 Months). Mr. Sakhardande would submit that, after dividing the total demanded amount of Rs.73,83,018/- by 111 months, the amount payable per month would be roughly Rs.66,513/-. Mr. Sakhardande has therefore shown willingness to contribute the amount of Rs.66,500/- per month during pendency of the Suit, without prejudice to the rights and contentions of Prestige Society. Mr. Godbole and Mr. Kanade, in their usual fairness, have agreed to this arrangement as well. This interim arrangement would be without prejudice to rights and contentions of the parties.

16. Considering the working arrangement suggested as above for use of basement parking as well as agreement prevailing between the two societies with regard to use of common amenities (except basement parking) and contribution towards operations and maintenance charges, the present Appeal is disposed of by passing the following order:

ORDER

(i) The order dated 30 April 2022 passed by the City Civil Court is modified to the extent that the injunction order shall continue to operate only in respect of providing access and use to common amenities of play area for children with equipment on podium, club house with gymnasium & swimming pool.

(ii) For use of the common amenities specified in Clause (i) above, the Prestige Society shall pay to Pride Society an amount of Rs.66,500/- per month on or before 10th day of each month during pendency of the suit. The payment for the period from date of Order of City Civil Court i.e. 30 April 2022 till September 2023 shall be made by Prestige Society within 4 weeks from today.

(iii) Pride Society shall permit use of parking spaces by 14 members of Prestige Society who have been allotted parking spaces by the developers without causing any obstruction.

(iv) The above interim measures shall continue during pendency of the suit. All contentions of both sides on merits are kept open and the City Civil Court shall decide the Suit on its own merits without being influenced by observations made either in its Order dated 30 April 2022 or in this Judgment.

(v) The Appeal is accordingly disposed of without any order as to costs.

(vi) In view of disposal of Appeal from Order, Interim Application No.16713 of 2022 stands disposed of.

(SANDEEP V. MARNE, J.)

17. After the Judgment is pronounced, the learned counsel appearing for Appellants request for stay to the operative portion of the order for a period of 6 weeks. Considering the fact that the members of Anmol Prestige Co-Op.

Housing Society Ltd. have been using 14 parking spaces for considerable period of time, request for stay is rejected.

(SANDEEP V. MARNE, J.)