

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

**APPEAL FROM ORDER NO. 678 OF 2023
WITH
INTERIM APPLICATION NO. 14669 OF 2023**

Dattani Shelter Co-operative
Housing Society Ltd.

...Appellant

V/s.

Kalindi Estate Developers & Anr.

...Respondents

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Mr. Nirman Sharma i/by. Jhangiani Narula & Associates, for the
Appellant.

Mr. Rajiv Narula a/w. Mr. Yashvi Panchal, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 28 August 2023.

P.C. :

1. Heard learned Counsels for the parties.
2. By this Appeal, the Appellant challenges order dated 24 July 2023 passed by the City Civil Court rejecting Notice of Motion No. 1810/2023. The Notice of Motion was filed by the Appellant seeking temporary injunction to restrain the Defendants from carrying out construction above 12th floor of the building,

from creating third party rights in any flat above 12th floor and for appointment of Court Receiver.

3. Appellant-Plaintiff has instituted Suit No. 1273/2023 before the Bombay City Civil Court challenging the plan dated 19 May 2022 submitted by the Defendants to the Slum Rehabilitation Authority and seeking a relief of injunction to restrain the Defendants from carrying out any construction above 12th floor of the building. Plaintiff's suit is premised on alleged non-disclosure of any plan for construction of the building above 12th floor. It was Plaintiff's case that though originally Commencement Certificate was granted for construction of 38 floors, the same got reduced to 12 floors well before the members of the Plaintiff-Society executed agreements for purchase of flats. The City Civil Court has proceeded to reject the Notice of Motion observing that the members of the Plaintiff Society were given due disclosure of the plans for construction of 38 floors in the building.

4. Mr. Sharma, the learned counsel appearing for the Appellant-Plaintiff would submit that though the agreement executed between the flat purchasers did make a reference to the proposal for construction of 38 floors, there was no proper disclosure as to why the construction was reduced from 38 floors to 12 floors. He would submit that the intervening events which had led to reduction of construction in the form of restrictions put on account of CRZ clearance were not made known to the flat

purchasers. That the law would require true and correct disclosure and non-disclosure on the part of the Defendants about reduction of construction area on account of CRZ restrictions would clearly dis-entitle the Defendants from carrying out any construction in pursuance of the revised Letter of Intent. He would draw my attention to several correspondence that took place between the Defendants and SRA and would submit that all those documents ought to have been disclosed by the Defendants to the members of the Plaintiff-Society.

5. Mr. Narula, the learned Counsel appearing for the Respondents would oppose the petition and support the order passed by the City Civil Court.

6. After having considered the submissions advanced by the learned Counsels, it is seen that a specific disclosure was made in the flat purchase agreements to the effect that the Developers had commenced construction of the building 'Dattani Shelter' consisting of stilt and 38 floors on the land. Additionally an Undertaking has been obtained from the flat purchasers under which they were made aware about the balance FSI in the building.

7. It is therefore difficult to believe at this stage that there was absolutely no-disclosure to the flat purchasers on the part of the Developer. Whether the disclosure so made, meets the requirements of law is something which can be decided at the final

decision of the suit. At this stage, Plaintiff could not make out a case of total absence of disclosure by the Developer about construction of building consisting of 38 floors.

8. Another interesting aspect is the conduct exhibited by the Plaintiffs before filing of the suit. The City Civil Court has made reference to the earlier suit filed by the Plaintiff being Suit No. 1515/2022. Mr. Sharma would candidly concede that the said suit was filed seeking almost the same relief of injunction to restrain the Developer from constructing 38 storey building. For the reasons unknown, the said suit was withdrawn on 8 August 2022 with liberty to institute a fresh suit. Later the Plaintiff-Society took an alternate route and filed Writ Petition (St.) No. 25625/2022 before this Court raising a plea that the existing building will not be able to bear the load of 38 floors. It appears that VJTI was appointed as an expert and a structural report was solicited by this Court to examine the structural stability of the building and whether the building would withstand additional floors. Accordingly, a Report was submitted by the expert team of VJTI certifying that the building would withstand the weight of additional floors. The petition was accordingly disposed of. Now Plaintiff has filed a suit once again taking the original plea of non-disclosure. This conduct of the Plaintiff-Society in withdrawing the earlier suit and taking an altogether different plea of structural stability of the building would clearly dis-entitle the Plaintiff-

Society from seeking equitable and discretionary relief of temporary injunction.

9. Mr. Sharma's reliance on judgment of this Court in (i) **Noopur Developers vs. Himanshu V. Ganatra and Ors.** 2010(7) Mh.L.J. 694; (ii) **Malad Kokil Co-operative Housing Society Ltd. Vs. Modern Construction Co. Ltd. & Ors.** 2012 6 AIR Bom.R. 257 would not assist the case of Appellants since I have already recorded a finding that there disclosure to the flat purchasers about plans of the Developer to construct 38 floor building.

10. In my view, therefore neither the Plaintiff-Society was not able to make out any *prima-facie* case for grant of interim injunction nor the conduct exhibited by it in withdrawing the earlier suit and filing a Writ Petition on an altogether different plea would entitle it to grant of any injunction to stop the Developer from putting up the construction. The City Civil Court has rightly refused to grant interim injunction in favour of the Plaintiff-Society. I do not find any merit in the Appeal. It is **dismissed** without any orders as to costs.

11. With dismissal of the Appeal, Interim Application No.14669/2023 does not survive. The same is disposed of as having become infructuous.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.