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904ao-1331-12-caa-1816-12-caa-1414-15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1331 OF 2012

with

CIVIL APPLICATION NO.1816 of 2012

with

CIVIL APPLICATION NO.1414 of 2015

Mr.Yeshwant Sukdeo Gaikwad & Ors. ... Appellants

Versus

M/s.Pooja Enterprises & Ors. ...Respondents

Mrs.Vrushali U. Kabare, for the Appellants.

Mr.R.Y.Sirsikar, for the Respondent no.6-MCGM.

CORAM: G. S. KULKARNI, J.
DATED: JANUARY 13, 2023

PC.

1. Heard Ms.Kabare, learned Counsel for the appellants and Mr.Sirsikar, learned Counsel for the Municipal Corporation-Respondent No.6. The other private respondents being respondent Nos.1 to 5 and 7 to 13 are not represented.

2. This appeal from order was filed on 1 September 2012 assailing an order dated 18 July 2012 passed by the learned Judge, City Civil Court, Bombay, whereby the Notice of Motion No.198 of 2012 as filed by the appellants-plaintiffs in L.C.Suit No.1649 of 2010 has been dismissed. The prayers in the Notice of Motion was for appointment of a Court Receiver in respect of the flats constructed by the developer-respondent

Nos.1 to 5 and which were occupied by respondent Nos.7 to 13. The learned Trial Judge for the reasons as set out in the impugned order was not persuaded to accept the case of the appellants for appointment of the Court Receiver.

3. The present Appeal from Order has remained pending since 2012. Perusal of the record also indicates that there are no interim orders passed granting any protection in favour of the appellants. In the meantime, it is informed that the suit has progressed, the appellants/plaintiffs are cross examining the defendants' witness.

4. Learned Counsel for the appellants has also brought to the notice of the Court an order dated 7 February 2018 passed on the present proceedings wherein a Co-ordinate Bench of this Court had disposed of a companion Appeal from Order no.1314 of 2012 by granting protection in favour of the appellants observing that respondent Nos.1 to 5 shall not construct any flat on the 8th floor of the suit building or shall not construct remaining portion of the suit building, without seeking permission of the Court.

5. It appears that the flats which were to be objected, and prayer for appointment of Court receiver was sought, are already in occupation of the flat purchasers. It is also pointed by the learned Counsel for the appellants that the plans for construction were sanctioned upto 13th floor and such constructed flats are already in occupation by respondent Nos.7 to 13.

6. In my opinion, it is appropriate that the appellants urge all their contentions in the pending suit at this stage of the suit and in the above circumstances, no useful purpose would be served in the appellants pressing a prayer for appointment of the Court Receiver.

7. The appeal is accordingly disposed of, however, with liberty to the appellants to request the learned Trial Judge to adjudicate the suit as expeditiously as possible. As the suit itself is of the year 2010, it is expected that the suit be disposed of at the earliest and in any event by December 2023.

8. All contentions of the parties in the pending suit are expressly kept open.

9. Disposed of in the above terms. No costs.

10. As appeal itself is disposed of, Civil Application Nos. 1816 of 2012 and 1414 of 2015 would not survive. The same are disposed of.

(G. S. KULKARNI, J)