

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 497 OF 2021
WITH
INTERIM APPLICATION NO. 3390 OF 2022
WITH
INTERIM APPLICATION NO. 16346 OF 2023

Amritlal Ladha MaruAppellant

V/s.

Amar Ghanshamdas Bajaj & Ors.Respondents

Mr. Anoshak Daver i/by. Mr. M.C. Shikhare, for the Appellant.

Mr. Piyush Shah a/w. Mr. Dishang Shah, Hetta Sagar, Mr. Shivam Desai, for Respondent No.1.

Ms. Parikshit Desai, for Respondent No.2.

Mrs. Smita Tondwalkar, for M.C.G.M-Respondent Nos.3 and 4.

CORAM : SANDEEP V. MARNE, J.

Dated : 19 October 2023.

P.C. :

1. The challenge in the Appeal is to the order 3 December 2021 passed by the City Civil Court by which the Court has passed temporary injunction in favour of the Plaintiff in the following terms :

1. Notice of Motion No. 953/2014 is partly made absolute in terms of prayer clause (a) as follows :

2. Defendant Nos.1 and 2 shall keep open the suit premises i.e. toilet block admeasuring 9' - 6" x 4' = 38 sq.ft situated on the rear side of Shop No.4 in the Crystal Blue premises Co-operative Society Ltd., Survey No.E/175 located at the corner of 1st Road and 16th Road and 16th Road, Khar (West), Mumbai-400 052 and in any event keep it in such position so that the access to the suit premises through the common passage on the rear of Shop Nos. 3 and 4 for the plaintiff and his staff or any other occupant of the shop No.3 or anyone visiting the Shop No.3, is not hindered or obstructed in any manner or for any reason whatsoever.
3. Cost in cause.
4. Notice of Motion No. 953/2014 is disposed of.

2. Defendant No.2 is aggrieved by the order dated 3 December 2021 and has filed the present Appeal. During pendency of the Appeal, certain developments have taken place. By Agreement for Sale dated 21 April 2023, the Plaintiff has sold Shop No.3 to one Mr. Santosh S. Bathija. Plaintiff was claiming right to use the suit toilet in question on the strength of his ownership and occupation in respect of Shop No.3. Now the Plaintiff is no longer owner or occupier of Shop No.3. Mr. Santosh S. Bathija is now the owner and occupier of Shop No.3. It appears that Mr. Santosh S. Bathija has been admitted as a Member of the Society. The Society in the meantime has decided to offer another toilet for use of Mr. Santosh S. Bathija. In view of availability of toilet facility to Mr. Santosh Bathija, it appears that he has decided not to stake any claim in respect of the toilet covered by the impugned order of the City Civil Court. In this

regard, the following minutes of the General Body Meeting of the Society held on 28 June 2023 would be relevant :

The second matter of his legal case against the Society for using the toilet of Shop No.4 as he claimed that toilet was common for Shop No.3 & 4. This matter is pending in the Court. Mr. Santosh Bhatija told me that he had decided to not claim any rights on the said common toilet of Shop No.3 & 4 and that he would coordinate with Mr. A.L. Maru and get the case cleared from the Court. This was accepted by the general body and he was requested to clear his dues along with the necessary transfer fees and entrance fees approved by the Society for which he had given the cheques. The other case of Mr. Bajaj pending in court of claiming refund of water charges etc. would be taken up by the Society, but as he had already sold his Shop, legally he could not have any rights on any future claims once he has sold the property, and Mr. Santosh could do nothing in this case, but he told he would cooperate on any matter in court, to get this case of shop No.3 closed.

a)Mr. Santosh Bathija, the new owner of Shop No.3, requested the general body for the usage of society common toilet for himself and his shop employees. He told that he would not disturb Mr. A.L. Maru by using the toilet behind Shop No.4, where Mr. A. Bajaj had allegedly claimed his right of usage in common with Mr. A. Maru. The Society offered him to use the common toilet facilities till such time he is the legal owner of Shop No.3. After discussion, it was decided that he may get the

common toilet split up into two and one portion will be used by him exclusively . He would enjoy the facility to use and occupy the half portion of the existing toilet staff exclusively for himself and for his team member and other portion will be used by society staff only. This repairs and renovation work will be done by Mr. Santosh Bathija at his cost and expenses. The general body requested him to kindly give the affidavit for the use of common toilet and that he would not claim any ownership rights or other rights except as stated in the affidavit. It was decided upon by all that he would only have the exclusive rights to use and occupy the common toilet made half today and for times to come and maintain the same in the future till such time he is the legal owner of Shop No.3. The same was accepted by him. This was passed unanimously by all.

3. The Minutes of the General Body Meeting of the Society are taken on record and marked 'X' for identification.

3. As of now, Mr. Santosh Bathija has not taken any steps for his impleadment as a Plaintiff in the suit. If the contents of the minutes of the General Body Meeting dated 28 June 2023 are to be believed, Mr. Santosh Bathija has decided not to claim any rights in the suit toilet.

4. In that view of the matter, considering the subsequent developments, the order of the City Civil Court cannot be maintained. However, at the same time, if Mr. Santosh Bathija wants to take steps

for his impleadment in the suit and for staking a claim to the suit toilet, he shall be at liberty to do so. Accordingly, the present Appeal is **disposed of** by setting aside order dated 3 December 2021 passed by the City Civil Court with liberty to the purchaser, Mr. Santosh Bathija to take out appropriate proceedings in future in respect of the suit toilet as and when the contingency arises. All contentions raised in the Appeal are left open.

5. With disposal of the Appeal from Order, pending Interim Applications also stand disposed of.

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Date: 2023.10.23
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SANDEEP V. MARNE, J.