



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15542 OF 2022**

Laxmi D. Kotere and anr.

...Petitioners

Versus

Shantaram D. Kotere and ors.

...Respondents

Mr. Suneet Moholkar for the Petitioners.

Dr. A.S. Tilak for the Respondents.

CORAM : N. R. BORKAR, J.
DATE : 1 SEPTEMBER 2023.

PC:-

1. During the pendency of suit, the trial Court by order dated 9 March 2021 while allowing the application filed by the respondent No.1/plaintiff for temporary injunction passed the following order:

"ORDER

1 This application is hereby allowed.

2 Temporary injunction is granted in favour of plaintiff restraining defendant No.2 and 3 from parting with possession of suit premises or creating third party interest in respect of suit premises till final disposal of this suit.

3 Temporary injunction is granted in favour of plaintiff restraining defendant No.1 and 4 from paying compensation to defendant No.2 and 3 for surrendering permanent alternate accommodation till final disposal of

this suit.

4. Temporary injunction is granted in favour of plaintiff restraining defendant No.1 and 4 from accepting defendant No.2 and 3 as member/share holder of suit premises and defendant No.2 and 3 are restraining from becoming member/share holder of suit premises till final disposal of this suit.

5 Costs to abide by result in the suit."

2. The appeal filed by the petitioners/defendant Nos.2 and 3 against the order of trial Court came to be dismissed. Hence this petition.

3. The learned counsel for the petitioners has tendered Undertaking-Cum-Declaration of the petitioners. The same is taken on record and marked as **"X"** for the purposes of identification. The learned counsel for the petitioners submits that petitioner No.2 is present before the Court.

4. For the ease of reference, the Undertaking-Cum-Declaration of the petitioners is scanned and reproduced below:

7 entered in court on 01/03/2023

and packed no. — ☒ — ✓

identifications *affidavit*
01/03/23

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DESHMUKH
Notary Public, No. 1122
Mumbai
MAHARASHTRA
NOTARY GOVT. OF INDIA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition no. 15542 of 2022

Laxmi Dhondu Kotere & antr Petitioners

Vs.

Shantatram Dhondu Kotere & antr Respondents

**UNDERTAKING CUM DECLARATION OF
PETITIONERS**

We, Mrs. Laxmi Kotere and Mrs. Kamala Reuben, the
Petitioners abovenamed, do hereby on solemn affirmation
state as under:

1. Petitioners abovenamed have filed the above Writ Petition
challenging the Judgment and order dated 1st November,
2022 passed by Small Causes Appellate Court whereby, the
Hon'ble Appellate court was pleased to confirm the order of
Trial court dated 9th March, 2021. By clause (4) of the said
order, the Id. Trial judge has granted injunction restraining
Defendant no. 1 and 4 (Petitioner no. 2 and 3 herein) from



accepting Defendant nos. 2 and 3 (Petitioner nos. 1 and 2 herein) as members /shareholders of Flat no. 402, 4th Floor, Keasar Equinox, plot no. 62, Hindu Colony, Sir Bhaichandra Road, , Dadar (E), Mumbai 400014 (hereinafter referred to as "said flat") and restraining the Defendant nos. 2 and 3 (Petitioner no. 1 and 2 herein) from becoming share holder/ member of the said flat pending the hearing of the suit,

2. The captioned Writ Petition came up for admission before His Lordship Mr. Justice N.R. Borkar on 29th August, 2023. At that time, after hearing the arguments of the parties, the Hon'ble court expressed its willingness to set aside the aforementioned clause (4) of the said order subject to the Petitioners giving an undertaking to the effect that they will not claim any equities by reason of becoming shareholder/member of said flat and that their membership of the flat will be subject to outcome of the RAD suit no. 1043 of 2014 pending in Small Causes Court, Mumbai. The Hon'ble court has adjourned the matter to 1st September, 2023 for the purpose of filing Petitioners undertaking.
3. The Petitioners are giving the present Undertaking/ Declaration pursuant to the said directions given by the Hon'ble court on 29th August, 2023
4. The Petitioners hereby give undertaking to this Hon'ble court that Petitioners will not claim any equities by reason of becoming member/shareholder in respect of Flat no. 402,



4th Floor, Kesar Equinox, plot no. 62, Hindu Colony, Sir
Bhalchandra Road, Dadar (E), Mumbai 400014 and
Petitioners hereby confirm/declare that their membership
in respect of the said flat will be subject to outcome of the
RAD suit no. 1043 of 2014 which is pending in Small
Causes Court, Mumbai.

5. Whatever that is stated above is true

Solemnly affirmed at Mumbai)

This 29th Day of August, 2023)

Ventrad Petitioner No.1. with
Aadhar No. 948862809732 ✓
Petitioner No.2 with
Aadhar No. 505256808408 ✓

Petitioner no. 1/Deponent no.1
(Laxmi Kotere)

Petitioner no. 2/Deponent no.2
(Mrs. Kamala Reuben)

Before me,


Suneet Moholkar

Advocate for Petitioners



BEFORE ME

ARUN G. DESHMUKH
REGD. No. 11252 B.Com. LL.B.
ADVOCATE HIGH COURT
NOTARY GOVT. OF INDIA
Office: Shop No. 1, Virajpur, Dandekar, Keshavnagar,
Ganesh Peth, Dadar (E), Mumbai - 400 028

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5. In view of the above Undertaking-Cum-Declaration of the petitioners, clause No.4 of the operative order of the trial Court is set aside. Rest of the order is confirmed.
6. The respondent No.2 shall admit the present petitioner/s as Member and shall issue Share Certificate accordingly.
7. Till decision of the suit, the respondent No.2 shall not admit any other Member in place of petitioner/s.
8. The Petition is disposed of in the above terms.

(N. R. BORKAR,J.)