

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 940 OF 2023
WITH
INTERIM APPLICATION NO. 17388 OF 2023
WITH
INTERIM APPLICATION NO. 17302 OF 2023

Sumangal Apartment Co-op.

Hsg. Society Ltd.

...Appellant

V/s.

Designated Officer, Asstt. Engineer

(B & F), K-West Ward Office

....Respondent

Mr. Amogh Singh i/by. Mr. Kaustubh Patil, for the Appellant.

Mr. Yogesh Patil i/by. Mr. Vijay Patil, for Respondent No.3-SRA.

Mr. Girish Godbole, Senior Advocate a/w. Ms. Aneesa Cheema, Mr. Samit Shukla, Mr. Mustafa Nulwala i/by. DSK Legal for Intervenor in IA-17388-2023.

Ms. Smita Tondwalkar, for Respondent-M.C.G.M.

Mr. A.G. Adate, A.E.(B & F), K-Ward, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 4 December 2023.

P.C. :

1. The challenge in the present Appeal is to the Order dated 9 November 2023 passed by the City Civil Court refusing to grant *ad-interim* relief in Draft Notice of Motion tendered by the Appellant-Plaintiff.

2. After hearing the learned counsel appearing for the parties for some time, there appears to be a serious dispute as to whether the structure of pump room is sanctioned in the development permission and/or in the Occupancy Certificate. It is Appellant-Plaintiff's contention that construction of the pump room is shown to have been sanctioned in the Occupancy Certificate, whereas the learned counsel appearing for the Intervenor would submit that the structure of pump room is not authorized either in the development permission or in the Occupancy Certificate. This issue goes to the root of the matter and would need adjudication. Therefore, instead of determining the correctness of the Order dated 9 November 2023, it would be appropriate if the City Civil Court is requested to take up the Notice of Motion for hearing and deciding the same in an expeditious manner.

3. The next issue is about the impleadment of the Intervenor/Developer to the suit. Mr. Singh, the learned counsel appearing for the Appellant would oppose the impleadment of the Developer as party Defendant to the Suit. In my view, since the

Plaintiff itself has made allegations about the misuse of Corporation's machinery by the Intervenor/Developer for issuance of the impugned notice, it would be appropriate that the Intervenor/Developer is impleaded as party defendant to the suit so that all parties are heard before deciding the Notice of Motion. Accordingly, the Intervenor/Developer shall file a formal application before the City Civil Court seeking impleadment which shall be allowed by the City Civil Court. The City Civil Court shall proceed to decide the Notice of Motion filed by the Appellant-plaintiff for temporary injunction as expeditiously as possible preferably within a period of four months from today.

4. Till decision of the Notice of Motion, the *ad-interim* order passed by this Court shall continue to operate.

5. With the above directions, the Appeal is **disposed of**. All pending Interim Applications filed therein also stand disposed of.

SANDEEP V. MARNE, J.