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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 7572 OF 2024
IN
WRIT PETITION NO. 2955 OF 2019**

Angelique Co-operative ... Applicant
Housing Society Ltd through
Secretary/Chairman

Vs.

Shri Ajitsinh Shankarrao Bhosale and Others ... Respondents

Mr. Jaydeep Deo for the Applicant.

Mr. Vishal Kanade i/b. Mr. Sagar Amrut Rane for Respondent Nos.
1 to 4.

Ms. M. S. Bane, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 15th APRIL 2024

P.C.

1. This application is filed to set aside / recall order dated 13th July 2022 passed in Writ Petition No. 2955 of 2019. By the said order the petition was dismissed as withdrawn. Since the learned Single Judge who passed the order is not available, at the principal bench at Mumbai, this application is listed before me as per the assignment.

2. Learned counsel for the applicant submits that the petition was filed to challenge the order of unilateral deemed conveyance passed under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 ("MOFA") on an application filed by the applicant-society. The society had claimed an area of 1537.60 square meters. However, only an area of 1325.10 square meters was granted; hence, the petition was filed. He further submits that during the pendency of the petition, an application filed by the society for issuing a corrigendum was allowed, and an area of 1537.60 square meters was conveyed. In view of the corrigendum that was issued, the applicant-society instructed to withdraw the petition. He further submits that the said communication for withdrawal of the petition was taken on record, and the petition was dismissed as withdrawn.

3. Learned counsel for the applicant submits that in the meantime respondent nos. 1 to 4 challenged the issuance of corrigendum by filing a writ petition. The said Writ Petition filed by the owners is allowed by order dated 16th January 2024. He submits that by the said order the corrigendum issued in favour of the applicant-society is set

aside. Hence, the original order of granting unilateral deemed conveyance for an area of 1325.10 square meters stands confirmed. He submits that by the said order, it is clarified that setting aside the corrigendum will not preclude the society from adopting appropriate proceedings as permissible in law in relation to the order dated 8th June 2015, i.e. the order which was impugned in the writ petition which was withdrawn by the applicant-society on 13th July 2022.

4. Learned counsel for the applicant submitted that the petition was withdrawn only because the corrigendum was issued. Thus, the writ petition was dismissed as withdrawn on the ground that it had become infructuous. He, therefore, submits that in view of the setting aside of the corrigendum in favour of the applicant-society, the writ petition that was withdrawn needs to be heard on merits. He, therefore, submits that the order dismissing the writ petition of the applicant-society be recalled and the petition be restored and heard on merits.

5. Learned counsel appearing for respondent nos. 1 to 4 opposes the application on the ground that it is not maintainable. Learned counsel submits that the order dismissing the petition as withdrawn is an order under Order 23 Rule 1 of the CPC to abandon the claim, and

hence applicant is now precluded from seeking recall of the said order. He submits that even otherwise, by order dated 16th January 2024, the applicant's rights, if any, are protected, and the society is therefore at liberty to adopt appropriate proceedings in relation to the order impugned in the petition that is dismissed as withdrawn.

6. I have perused the papers. The Writ Petition of the applicant-society was dismissed as withdrawn. Though the society's communication for withdrawal was taken on record, the petition is unconditionally withdrawn without reserving any liberty to the applicant. Thus, the order dismissing the petition as withdrawn is an order under Order XXIII Rule 1 of CPC; thus, it amounts to abandonment of the claim in the petition. Hence, the applicant is precluded from seeking recall of the order, which would amount to permitting the applicant to revive the claim which is unconditionally withdrawn. Learned counsel for the applicant is unable to point out any supporting provision of law or any legal principle permitting recall of the order dismissing the applicant's petition as withdrawn. Learned counsel for the applicant, however, submits that this application may be allowed by exercising powers under Section 151 of the CPC.

7. Learned counsel for respondent nos. 1 to 4 is right in submitting that by the order passed in the petition filed for challenging the issuance of corrigendum, this Court has protected the rights of the applicant-society and clarified that the setting aside of the corrigendum shall not preclude the society from adopting appropriate proceeding as permissible in law in relation to the order dated 8th June 2015, i.e. grant of unilateral deemed conveyance. The law regarding the grant of unilateral deemed conveyance under Section 11 of the MOFA is no longer res integra. The said order does not decide the rights of the parties qua the title of the property. Hence, it is further clarified that dismissal of the present application would not be an impediment to the applicant's right to claim additional area by adopting appropriate proceedings as permissible in law.

8. Thus, the order impugned in the petition does not prejudice the applicant society, as it is always open to the applicant society to adopt appropriate proceedings to claim title for the additional area, irrespective of the order passed under Section 11 of the MOFA.

9. In view of the aforesaid reasons, I do not find that this is a fit case for exercising the inherent powers of the court.

10. Hence, for the aforesaid reasons the application is dismissed.

[GAURI GODSE, J.]