

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL NO. 3 OF 2024  
WITH  
INTERIM APPLICATION NO. 2199 OF 2024  
IN  
COMMERCIAL APPEAL NO. 3 OF 2024

Oscar Infrastructure Pvt Ltd & Anr ...Appellants

*Versus*

Aparna Jagdish Wagh & Ors ...Respondents

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**Mr. Cyrus Ardeshir**, *a/w Anoshak Daver & Yogesh Ramu & Kevin Pereira, i/b Chinmay Acharya, Advocates for the Appellants.*

**Mr. Anuj Desai**, *i/b Ram Ramrakhiani, Advocates for Respondent Nos.1 to 3.*

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CORAM : B. P. COLABAWALLA &  
SOMASEKHAR SUNDARESAN, JJ.

DATE : MARCH 18, 2024

PC :

1. By consent of the Appellants and Respondent Nos.1 to 3 herein, the following order is passed:

(i) The impugned orders dated 21.2.2024 and 3.12.2022 are hereby set aside.

(ii) As a protem arrangement, pending the hearing and final

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disposal of the Application under Exhibit 5, being the application for temporary injunction under Order 39 Rule 1 of the Civil Procedure Code, 1908, in Commercial Suit No.4 of 2022 filed in the Court of District Judge at Kalyan, the Appellants shall, in accordance with Clause 2(A)(ii) of the Development Agreement dated 30.10.2013, be entitled to build, construct and sell/transfer/create third party rights in respect of a total area of 16,000 square feet carpet area (Sixteen Thousand Only) on **Property No.1** and **Property No.2** comprising of commercial and/or residential premises to any third party and retain the sale proceeds thereof. **Property No.1** and **Property No.2** are described herein below:

- a. the piece and parcel of Plot of land in Dombivili bearing Survey No.91/A, 1/1,91B, Plot No.28 admeasuring 750 sq. yards, equivalent to 627 sq. meters as per records of 7/12 and denoted by corresponding City Survey No. 8279 to 8284 totally admeasuring 661 sq. meters or thereabouts lying, being and situated at village Ayre, Taluka Kalyan, District Thane within the limits of the Kalyan and Dombivili Municipal Corporation and within the limits of the Registration District Thane and sub-district Kalyan hereinafter for the sake of brevity called '**Property No.1**' along with the benefits of the share certificates of the Dombivili Co-operative Hsg. Society Ltd.

- b. the piece and parcel of Plot of land in Dombivili bearing Survey No.91/A, 1/1,91B, Plot No.30 admeasuring 980 sq. yards, equivalent to 819.28 sq. meters as per records of 7/12 and denoted by corresponding City Survey No. 8265 to 8269 totally admeasuring 836.7 sq. meters or thereabouts lying, being and situated at village Ayre, Taluka Kalyan, District Thane within the limits of the Kalyan and Dombivili Municipal Corporation and within the limits of the Registration District Thane and sub-district Kalyan hereinafter for the sake of brevity called '**Property No.2**' along with the benefits of the share certificates of the Dombivili Co-operative Hsg. Society Ltd.
- (iii) The present order is being passed without prejudice to the rights and contentions of the parties. All rights and contentions of the parties are kept open.
- (iv) The Learned Trial Judge at the Court of District Judge at Kalyan, shall decide the Exhibit 5 Application on its own merits without being influenced by the present order. Whilst disposing of the Exhibit 5 Application, it shall be open to the Trial Court to pass such orders as it would deem appropriate, including orders which have the effect of varying, altering, and/or modifying the present order, after recording reasons for the same. It is made clear that this is only a protem arrangement and the Trial Court shall be at liberty to pass

such orders as it deems fit after hearing all parties.

- (v) The application under Exhibit 5 shall be heard and disposed of by the Learned Trial Judge at the Court of District Judge at Kalyan, as expeditiously as possible and in any event within a period of twelve weeks from today.

2. The above Appeal is disposed of in the aforesaid terms. However, in the facts and circumstances of the present case there shall be no order as to costs.

3. In view of the disposal of the Appeal, nothing survives in the above Interim Application and the same is also disposed of accordingly.

4. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[ SOMASEKHAR SUNDARESAN, J.]

[ B. P. COLABAWALLA, J.]