

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 176 OF 2024
WITH
INTERIM APPLICATION NO. 1905 OF 2024

Soni Tower Co. Operative Housing Society ...Appellant
Limited

Versus

M/s. Soni And Associates And Another ...Respondents

Mr. Nishant Sashidharan with Karan Jakhar i/b LJ Law for the Appellant.
Mr. Rajesh Kachare for Respondent No.1.
Ms. Seena Rawade for Respondent No.2/BMC.
Mr. Babu Mohammad Badgujar, proprietor of Respondent No.1 present

CORAM : M.M. SATHAYE, J.
DATE : 16th DECEMBER 2024

P.C. :

1. Heard learned counsel for the parties.
2. The appeal is filed challenging the impugned order dated 01.12.2023 passed in Notice of Motion No. 3536 of 2023 and Notice of Motion No. 3098 of 2023 in L.C. Suit No. 1660 of 2016 by Bombay City Civil Court at Dindoshi, Borivali Division, Goregaon, Mumbai.
3. By the said impugned order, the motion taken out by the Appellant/Plaintiff society seeking certain disclosures about sanction permission and further injunction not to create 3rd party interest or part with possession and not to carryout further construction, was rejected.

4. Apparently, dispute revolves around the present construction which is undertaken by the Respondent/Developer, which according to the Developer is on CTS No. 662. This position is however disputed by learned counsel for the Appellant/Society by contending that during pendency of the suit, the Society has received deemed conveyance of 3300 sq. mtrs. portion from CTS Nos. 661, 663 and 667. It is submitted that since the Respondent/Developer is proceeding with construction after amalgamation of these plots, according to the Society, the Respondent/Developer is using the TDR/FSI benefits from property of the society under the deemed conveyance.

5. Perusal of the impugned order shows that it was *prima facie* found that the present construction is on the parking allotted to the members of the Plaintiff/Society.

6. After the matter was considered for some time, learned counsel for the Respondent/Developer on instructions from proprietor of Respondent No.1/Developer, who is present in the Court, submits that as on today, 51 flats are already sold and 3rd party interests are already created. He however states on instructions that sale of balance flats can be made subject to final outcome of the suit and in that situation, and Respondent No.1/Developer will not claim equity in respect of such sale of balance flats and the prospective purchasers in respect of balance flats will be put to notice about the pendency of the suit as well as present order.

7. Learned counsel for the Appellant/Society on instructions submits that if such statement is recorded, it can be accepted without prejudice and the Appeal can be disposed of.

8. In that view of the matter, **the Appeal from Order and the pending application are disposed of** with the above statement of Respondent No.1 recorded as undertaking to this Court.

9. Considering that the suit is of the year 2016 and is already pending for last 8 years, the hearing of the suit is expedited, preferably within a period of one year from today.

10. Needless to mention that the suit will be decided on its own merits and in accordance with law without being influenced by the observations made in the impugned order or in this Order.

11. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)