

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.387 OF 2024
IN
APPEAL (L) NO.217 OF 2024
(APPEAL NO.25 OF 2024)
IN
SUIT NO.1044 OF 2007
WITH
INTERIM APPLICATION NO.1842 OF 2023**

Munna R. Puthalappa : Applicant.

In the matter of

Munna R. Puthalappa : Appellant/Original Plaintiff.

Vs.

Ramesh Harilal Mehta and ors. : Respondents.

Mr. Vipul J. Shah for the Applicant/Appellant.

Mr. Amit Tungare for Respondent Nos.1 and 2.

Mr. Deval Anja for Respondent No.3.

Mr. S. K. Dhekale, Court Receiver, High Court, Bombay and Mr.
Rahul Pawar, Representative of Court Receiver present.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 04th MARCH, 2024

P.C. :

1. The matter is on board today pursuant to a praecipe filed by the Appellant seeking clarification of the order dated 16th

January 2024 by which the captioned Appeal came to be allowed, in the following terms :-

"9. *After having heard Learned Counsel and considering their rival contentions we find merit in the submissions made by Learned Counsel for the Appellant. We find that the Impugned Order to the extent that the same (a) directs the Court Receiver to handover possession of the said shops to Respondent No.3 (b) directs payments as set out in Paragraph 23 of the Impugned Order to Respondent No.3 and (c) directs the Appellant to file an undertaking as set out in Paragraph 23 of the Impugned Order, is entirely unsustainable for the following reasons, viz.*

A. *First, what was before the Learned Judge were Consent Terms entered into between the Appellant and Respondent Nos.1 and 2 i.e., the only parties to the Suit. The Learned Judge therefore ought to have after examining the Consent Terms, either accepted them if they were in order or rejected them if they were not. It was not open to the Learned Judge to, on the one hand, accept the Consent Terms and then unilaterally completely modify them and then proceed to dispose of the Suit on that basis.*

B. *Second, what is even more surprising is that the*

Learned Judge has proceeded to do so at the instance of a third party to the Suit. Infact, as the record bears out, Respondent No.3 did not even oppose the Consent Terms, but infact only sought for payment of the claims made by it for maintenance charges etc. The Learned Judge has also ignored/overlooked the previous orders passed in the Suit which required that the claims of Respondent No.3 filed before the Court Receiver and the Appellant and Respondent Nos.1 and 2 were granted an opportunity to contest the same. Despite the fact that the claim made by Respondent No.3 had admittedly not been verified, the Appellant has been directed to pay the same but also pay any future maintenance charges as may be raised by Respondent No.3 for the premises which would be handed over to the Appellant under the Consent Terms as also to give an undertaking to that effect.

- C. *Third, we must note that Respondent No.3 has admittedly not taken any steps for recovery of maintenance charges as per the provisions of the Maharashtra Co-operative Societies Act, 1960 despite the fact that as per the contention of Respondent No.3 the outstandings have not been paid since 2009. Additionally, the amounts claimed have been seriously disputed by the Appellant, despite all this, the Learned Judge has not only directed payment of the maintenance amount as claimed by Respondent No.3 but has also permitted interest and directed (i)*

the Appellant to give an undertaking that such amount would be paid (ii) directed that the shops which were to go to the Appellant & Respondent Nos.1 and 2 under the Consent Terms be handed over to Respondent No.3 until the entire outstanding amount of maintenance was paid and (iii) directed that future amounts due towards maintenance would also be paid. We fail to understand how such directions could ever be passed in the present Suit absent consent of the parties.

D. Fourth, we find that the Learned Judge has in fact proceeded on an entirely erroneous basis by completely misreading the Consent Terms as is evident from a plain reading of Paragraph 22 of the Impugned Order which records viz.

"22.However since parties have decided to the contrary as agreed upon in Clause 4.15, hence it shall be the Plaintiff who is directed to pay the entire amount of outstanding amounts towards principal charges of maintenance of the society for the suit property upto 31.12.2023."

There is infact no such concession in the Consent Terms at all. The misreading of the Consent Terms is ex facie apparent from the fact that while the Learned Judge has referred to Paragraph 4.15 to

conclude that the Appellant had agreed to pay the entire amount of outstanding maintenance charges upto 31st December 2023, there is infact no such concession in the said Paragraph. The only mention of payment of maintenance charges is to be found in Paragraphs 4.5, 4.10 and 4.11 of the Consent Terms as extracted above. However even assuming such a concession existed, even then the directions passed in the Impugned Order are entirely unsustainable and can in no manner in the facts of the present case justify (a) directing the Appellant to make payment of the amounts claimed by Respondent No.3 without so much as an opportunity to contest the same (b) directing the Court Receiver to hand over possession of the shops to which the Appellant, Respondent Nos.1 & 2 are entitled to under the Consent Terms to Respondent No.3 and (c) directing the Appellant to file an undertaking to the effect that the Appellant shall not only pay the entire pending maintenance charges upto 31st December 2023 but also pay any future maintenance charges as may be raised by Respondent No.3."

Mr. Shah has submitted that despite the aforesaid order which in terms set aside the directions contained in order dated 22nd December 2023 ("the Impugned Order") for payments to be made to Respondent No.3 (Society), Respondent No.3 had

approached the Court Receiver seeking release of an amount of Rs.73,43,000/- as mentioned in para 22 of the Impugned Order. He submitted that since in paragraph 10 of order dated 16th January 2024 this Court had made reference only to the directions contained in paragraphs 23 to 25 of the Impugned Order, Respondent No.3 was pressing for release of the said amount of Rs.73,43,000/- since the same was mentioned in para 22 of the Impugned Order. Mr. Shah submitted that such a stand on the part of Respondent No.3 was patently contrary to the order dated 16th January 2024 wherein the Court Receiver was directed to release only an amount of 40,00,000/- to Respondent No.3 as agreed between the parties to the Suit in the Consent Terms and no other sums.

2. *Per contra*, Mr. Anja, learned counsel appearing on behalf of Respondent No.3 (Society) submitted that what the Appellant was seeking was a substantial modification of the order dated 16th January 2024 for which he submitted that the Appellant was required to file a Review Petition. He submitted

that the amounts mentioned in paragraph 22 of the Impugned Order were the amounts due towards maintenance charges owing to the Society, and that if the same were not paid over to Respondent No.3 (Society), then a grave prejudice would be caused to Respondent No.3 since the Society would take several years to recover these amounts.

3. Having heard learned counsel for the parties we find that though the order dated 16th January 2024 is plain and clear, the need to clarify the same has arisen only because of the most unfortunate and regrettable conduct of Respondent No.3 in deliberately attempting to misread the said order.

4. As we have already noted above, this Court had in the order dated 16th January 2024 returned detailed findings *inter alia* as to why the amounts claimed by Respondent No.3 (who was not even party to the suit) could never have been directed to be paid since the Consent Terms were between only the parties to the suit and by which it was agreed that only an amount of Rs.40,00,000/- would be paid to the Court Receiver in

terms thereof. All other amounts claimed by Respondent No.3 were strongly disputed by the Appellant. We have also noted previous orders of this Court in which it has been noted that the claims made by Respondent No.3 and bills raised were not only inflated but also raised contrary to previous orders of this Court. We have also noted that Respondent No.3 was not a party to the suit and nor had Respondent No.3 even taken out any independent proceedings for recovery of its alleged dues. It is thus that for Respondent No.3, in light of above findings in the order dated 16th January 2024, on the basis of para 22 of the Impugned Order, to call upon the Court Receiver to make payment of Rs.73,43,000/- is indeed most regrettable.

5. The contention of Respondent No.3 that the Appellant ought to have taken out an application for review is equally untenable. The present application being one for merely clarification is permissible under Section 152 of the Code of Civil Procedure since what effectively the Appellant is seeking is the omission of the mention of paragraph 22 in paragraph 10 of the

order dated 16th January 2024.

6. Hence we clarify that apart from the amount of Rs.40,00,000/- as agreed in the Consent Terms, no further amounts are to be paid over to Respondent No.3 in view of observations made in the order dated 16th January 2024.

7. The order dated 16th January 2024 is corrected to read as follows :-

(i) In para 9 in sub-clause (b) paragraph 23 to be corrected to read as "**paragraphs 22 and 23**".

(ii) In para 10 paragraphs 23 to 25 to be corrected to read as "**paragraphs 22 to 25**".

8. The praecipe is accordingly disposed of.

9. Office to accept the vakalatnama filed on behalf of Respondent No.3.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)