

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1538 OF 2019
IN
WRIT PETITION NO. 974 OF 2012**

Kagalwala Building Resident Welfare Association	...Applicant
<i>In the matter between</i>	
Kagalwala Building Resident Welfare Association	...Petitioner
<i>Versus</i>	
Aaraish Developers & Ors	...Respondents

**WITH
INTERIM APPLICATION NO. 690 OF 2024
IN
WRIT PETITION NO. 974 OF 2012**

Farida Mansoor Unwalla	...Applicant
<i>In the matter between</i>	
Kagalwala Building Resident Welfare Association	...Petitioner
<i>Versus</i>	
Aaraish Developers & Ors	...Respondents

Mr Mihir Desai, Senior Advocate, with NM Sangle & Sujit Nikam,
for the Applicant/Petitioner.
Mr Kunal Waghmare, for the Respondent-MCGM.
Mr PG Lad, with Shreya Shah, for the Respondent-MHADA.
Mr Harish Pandya, i/b Mujtaba Shaikh, for Respondent-Developer.

**CORAM G.S. Patel &
 Kamal Khata, JJ.
DATED: 13th March 2024**

PC:-

1. Mr Desai has a revised statement of arrears. This is in excess of Rs 2.4 crores. Mr Pandya for the developer seeks time to take instructions on the accuracy of this statement. In the meantime, he hands over Demand Draft No 069845 drawn on ICICI Bank for Rs 33,30,636/-. The instrument is to be deposited by the Prothonotary and Senior Master. The Petitioner's Advocate will apply for a withdrawal of the amount and a distribution pro rata between the present members of the Association. We are not extending this order to other persons who are not members of this Association.
2. The Prothonotary and Senior Master will permit the withdrawal either by an office bearer of the Association as intimated by the Advocate or by the Advocate but the transfer by the Court must be to the nominated bank account of the Association only.
3. The distribution between the members is to be done by the Association but a copy of that distribution is to be filed on Affidavit before this court and is to be given to Mr Pandya. We require this to be done because there is a per-member claim for arrears and going forward it will not be possible to give adjustment or credit for the present withdrawal unless this information is placed on Affidavit.
4. The construction is far from complete. There is no clarity on this aspect of the matter either. We require Mr Pandya to take

specific instructions as to when the construction will be complete to accommodate all persons as per the certified list (whether or not they are members of the Association). Some time frame must also be specified for payment of the undisputed amount of arrears of transit rent.

5. List the Petition on 28th March 2024.

INTERIM APPLICATION NO. 690 OF 2024

6. The Interim Application was earlier filed by the Association seeking relief for one member, Farida Mansoor Unwalla. We had by previous order not rejected the application but directed that it should be filed in the name of Farida Mansoor Unwalla. She is the legal heir of a deceased tenant Mansoor Ebrahim Unwalla. The other heirs have, as we have noted, granted a No Objection in favour of Farida. There is an amount of Rs 18,64,668/- deposited with the Prothonotary and Senior Master of this court by a Demand Draft of 20th January 2021. This is towards payment of an arrears of rent for the tenants on furnishing an undertaking and indemnity bond. Farida Mansoor Unwalla has furnished that undertaking and indemnity bond. Her share of the amount of deposit is Rs 90,000/-. We allow the Interim Application by permitting Farida Mansoor Unwalla to withdraw the amount of Rs 90,000/-. If the deposit has been invested then Farida Mansoor Unwalla would be entitled to a pro rata share of the interest earned on Rs 90,000/-.

7. It goes without saying that this application has been made on the representation by Farida Mansoor Unwalla that the other heirs have granted a No Objection. If there is any dispute in this regard that will be entirely between Farida Mansoor Unwalla and any other claimants. Since the deposit has already been made in court there is no question of any other heir of the deceased certified tenant making a claim for these arrears against the developer or against any authority.

8. The Interim Application is disposed of in these terms.

(Kamal Khata, J)

(G. S. Patel, J)