



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL NO. 47 OF 2024

IN

INTERIM APPLICATION (L) NO. 31042 OF 2024

IN

COMMERCIAL SUIT NO. 116 OF 2022

Dahiben Dalpatbhai Mistry & Ors.

..... Appellants

VERSUS

**M/s. Green Building Lifescapes LLP
& Ors.**

..... Respondents

Mr. Piyush Shah a/w. Mr. Aditya Tayade for the Appellants.

Mr. Amogh Singh a/w. Ms. Krutisha Pandey, Mr. Vikas Mishra, Mr.
Nirav Karia i/b. Mr. Bhavin Bhatia for the Respondent No.1.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 5th DECEMBER, 2024

P.C. :-

This Commercial Appeal is filed by the original defendant nos. 11 to 15 challenging an order dated 15th February 2024 passed by the learned Single Judge of this Court in Interim Application (L) No. 31042 of 2023 which was preferred by the defendant nos. 11 to 15 in an disposed off commercial suit.

2. The commercial suit was filed by the developer against the society and its members wherein the present appellants were arraigned as defendant nos. 11 to 15. The said commercial suit was disposed off on 8th March 2022 since the parties had entered into Consent Terms. After the disposed off suit, the present appellants (original defendant nos. 11 to 15) preferred an interim application seeking a direction to the developer (plaintiff) to deposit the outstanding rent upto date in defendant no.11's account through Court/directly and also further to pay rent/compensation for onward month's amount till defendant no.11 is put in possession of the suit flat.

3. The said interim application was heard by the learned Single Judge of this Court on 15th February, 2024. While the interim application was heard before the learned Single Judge, the developer (plaintiff) handed over a cheque for transit rent for the period of 17 months in the name of the defendant no.11, to the advocate appearing for the defendant nos. 11 to 15. It was also agreed that due to some error, one month's rent was not

paid, and the same would be paid within a week. The Single Judge by his order directed that from the month of March 2024, the developer (plaintiff) shall transfer the amount towards monthly transit rent directly in the account of the defendant no.11, on or before 5th day of each month as per the development agreement. Accordingly, the interim application filed by the defendant nos. 11 to 15 was disposed off. The present appellants (original defendant nos. 11 to 15) have challenged the order passed on 15th February 2024 by the learned Single Judge in the present appeal.

4. Mr. Piyush Shah, learned counsel appearing on behalf of the appellants submitted that the learned Judge had erred and not considered that the development agreement for the new flat should have been executed in favour of the appellant no.1, as the keys of the old flat was handed over to the developer (plaintiff) by the present appellants who were defendant nos. 11 to 15 in the suit filed by the developer. He submitted that he is supported in his arguments by the order passed by the Division Bench of

this Court in *Appeal (L) No. 1272 of 2024, (Achala Rajesh Agarwal vs. Vinod Narayandas Punjabi & Ors.)*. He submitted that after March 2024, the developer (plaintiff) has not paid the transit rent to the appellants. He submitted that hence, this Court should direct the developer (plaintiff) to deposit the arrears of transit rent and further to keep on paying monthly transit rent till the possession of the new flat is handed over to the appellants. He further submitted that the development agreement should also be executed in favour of the appellant no.1.

5. Mr. Amogh Singh, learned counsel appearing on behalf of the respondent no.1/developer submitted that his client had already deposited the monthly transit rent upto June 2024 and his client is willing to deposit the arrears, if any. He submitted that the GST amount of Rs.2 lacs is not been paid. Hence, his client was not able to execute the development agreement. He submitted that the occupation certificate has already been issued and his client is ready to handover possession of the subject flat.

Therefore, his client after receiving the occupation certificate by the Municipal Corporation and being ready to handover possession are not liable to pay the monthly transit rent to the appellants. He submitted that there is internal family dispute between the appellants and the brother of the appellant no.2 who is a blind person. He submitted that a civil suit *inter se* between the family members of the appellants is pending before the City Civil Court at Dindoshi. An interim application is preferred in the City Civil Court has been heard and is pending for passing of order. He submitted that the prayer of the said suit covers the issue *inter se* between the family members. He submitted that the present commercial appeal is challenging only the order passed by the learned Single Judge of this Court in the disposed off suit, on an interim application filed by the appellants, which in fact was allowed. He submitted that there is no merit in the present commercial appeal and the same should be dismissed.

6. We have heard learned counsel for both the parties. The

appellants who are the original defendant nos. 11 to 15 have challenged the impugned order dated 15th February 2024 which in fact was preferred in a disposed off suit, seeking only the payment of outstanding monthly transit rent. The interim application was allowed in favour of the appellants even though the said interim application was in a disposed off suit.

7. It is a matter of record that as regards the *inter se* dispute between the family members of the appellants with the respondent no.11, who is a blind brother of the appellant no.2, a suit is pending before the City Civil Court at Dindoshi. As regards the monthly transit rent is concerned, Mr.Singh has submitted that till June 2024, the transit rent has already been paid and if there is any balance amount payable, the same shall be paid by his client/the developer.

8. The Municipal Corporation has already issued Occupation Cum Building Completion Certificate of the building in which the subject flat is situated. The developer would not be liable to pay

any further monthly transit rent after the Corporation has issued the building completion certificate and the developer being ready to deliver possession of subject flat. The rest of the dispute *inter se* between the family members of the appellants would be decided in the suit which is pending before the City Civil Court. The order of Co-ordinate Bench of this Court in *Achala Agarwal* (supra) referred by Mr.Shah will not be applicable to the present proceedings, since the order impugned in the present proceedings pertains to non payment of transit rent, as regards the execution of Development Agreement is concerned, the said issue is pending before the City Civil Court. Therefore, the observations made in the order passed in *Achala Agarwal* (supra), does not help in supporting the case of appellants.

9. Hence, we find that there is no merit in the present commercial appeal and the same is dismissed. No costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]