MJ Jadhav

MANGALTAI JAYWANT JADHAV
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Date: 2025.02.07 17:17:01 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 14 OF 2024
WITH
INTERIM APPLICATION NO. 241 OF 2024
IN
APPEAL FROM ORDER NO. 14 OF 2024

Cable Corporation of India Limited	… Appellant
vs.	
The Western Edge II Premises Co-operative Society Limited Through Authorized Mr. Nitin Kajalkar	… Respondent

Mr. Aspi Chinoy, Senior Advocate a/w Nikhil Sakhardande, Senior Advocate a/w Yash Momaya a/w Munaf Virjee and Rushabh Parekh i/b AMR Law for the Appellant.

Mr. Mehul Shah for Respondent No.1.

Mr. Simil Purohit a/w Krishna Balaji Moorthy a/w Bhakti Mehta a/w Letishiya Chaturvedi i/b Wadia Ghandy & Co. for Respondent No.2.

CORAM : GAURI GODSE, J.

DATED : 4th FEBRUARY 2025

ORDER :-

1. The appeal raises arguable points. Hence, admit.

2. Mr. Mehul Shah waives service on behalf of respondent no.1.

3. Mr. Simil Purohit a/w Krishna Balaji Moorthy a/w Bhakti Mehta a/w Letishiya Chaturvedi waive service on behalf of respondent no.2.

INTERIM APPLICATION NO. 241 OF 2024 :

4. Rule on interim relief in terms of prayer clause (a) is made returnable on 1st April 2025.

5. The impugned order issues restrictions on the original owner from utilizing the FSI. The suit is filed by the society based on the flat purchase agreements in favour of the members of the society. The prayers in the suit are only for injunction without seeking any declaration for the rights accrued in favour of the society.

6. The impugned order grants temporary injunction, which are in terms of the final reliefs that are claimed in the suit.

7. The society claims rights only based on the terms and conditions of the flat purchase agreement in favour of the members of the society. Learned counsel for the society mainly relies upon clause 34 of the flat purchase agreement, which entitles the society to get the conveyance from the developer.

8. A perusal of the terms and conditions of the agreement indicates that the society would be entitled to conveyance of the property developed by defendant no.2 in terms of the development agreement, which is for construction for an FSI inclusive of TDR limited to 59,157 square meters on an area of 31,323 square meters.

9. Thus, in view of the terms and conditions of the flat purchase

agreement and the terms and conditions of the development agreement, prima facie, the society would not be entitled to claim any relief beyond the entitlement of the developer.

10. Hence, during the pendency of the application, there will be ad-interim stay in terms of prayer clause (a).

(GAURI GODSE, J.)