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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 545 OF 2024
WITH
INTERIM APPLICATION NO. 10760 OF 2024
AND
APPEAL FROM ORDER NO. 546 OF 2024
WITH
INTERIM APPLICATION NO. 10762 OF 2024**

Anil Agarwal ... Appellant/Applicant
Vs.

Sanjay P. Agarwal and Another ... Respondents

Mr. Dhananjay Singh i/b. Mr. Shailesh Rai for the Appellant.
Mr. Sahil Mahajan for the Respondents.

CORAM : GAURI GODSE, J.

DATE : 22nd JANUARY 2025

ORDER :

1. Heard learned counsel for the parties. These appeals filed by the defendant are taken up for final disposal by consent.
2. By the impugned order the defendant is restrained temporarily from creating any obstruction in parking vehicle in allotted slot in parking lot in respect of Flat No. 601 and Flat No. 2.
3. Learned counsel for the appellant submits that no specific allotment letter is issued either by the developer or by the society identifying any parking lot. He therefore submits that in the absence

of any identification of the parking slot the impugned order would not be sustainable.

4. Learned counsel for the respondent i.e. plaintiff relies upon circular dated 4th December 2009. The circular indicates payment of charges for car parking. The circular does not refer to any particular parking slot allotted to any member. In addition to the circular, learned counsel for the plaintiff relies upon photograph annexed at page 118. The photograph also does not indicate any particular parking slot allotted to any particular member. It is not in dispute that the circular dated 4th December 2009 was challenged before the Co-operative Court and the dispute is still pending before the Co-operative Court. Except for that circular the plaintiff is unable to point out any allotment in favour of the plaintiff creating any right in respect of any parking space.

5. Learned counsel for the respondent-plaintiff relies upon letter dated 9th August 2018 issued by the society to the plaintiff. The contents of the letter state that the society has already intimated the occupier/owner of Flat No. 501 with regard to the complaint of unauthorised parking. The letter further indicates that the society would impose penalty in the society bill for the number of days of improper and unauthorised parking. Flat No. 501 is owned by the

appellant. Thus the said letter indicates that the society has already taken note of the dispute between the parties and appropriate decision is already taken by the society. There is no dispute that the society owns the open parking space as there is no right created in favour of either of the parties in respect of the open space or parking slots which belongs to the society.

6. In view of the grievance already made before the society and action taken by the society, the dispute raised in the suit appears to have been taken note of by the society. Thus, in view of such undisputed facts and cognizance already taken by the society, there is no reason to pass any prohibitory order in a civil suit where disputed questions are yet to be decided in the trial.

7. In the absence of any agreement in favour of the plaintiff there cannot be any debate that the open parking space belongs to the society and none of the members have exclusive right for any parking space. In the absence of any prima facie case recorded in the impugned order regarding any exclusive right of the plaintiff in respect of any particular parking space, the impugned order would not be sustainable.

8. Other points raised by the plaintiff are disputed facts which will have to be decided after the trial. There are no reasons recorded in

the impugned order with regard to any parking slot which can be identified. In the absence of any identification of particular parking slot in the name of the plaintiff, the impugned order would not be sustainable. Hence the appeals are allowed by passing the following order :

- (i) Order dated 13th February 2024 passed by the City Civil Court in Notice of Motion No. 3897 of 2018 in S.C.Suit No. 3185 of 2018 and Notice of Motion No. 4564 of 2018 in S.C. Suit No. 3763 of 2018 are quashed and set aside.
- (ii) Notice of Motion No. 3897 of 2018 and Notice of Motion No. 4564 of 2018 are dismissed.
- (iii) In view of the disposal of the appeals, interim applications are disposed of as infructuous.

[GAURI GODSE, J.]