

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 3 OF 2025
IN
APPEAL FROM ORDER NO. 732 OF 2023

M/s. Govind Infratech

...Petitioner

Versus

Haresh V. Kagrana HUF thru. Its Karta Mr. ...Respondents
Hargesh V. Kagrana and Ors.

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WITH
REVIEW PETITION NO. 4 OF 2025
IN
APPEAL FROM ORDER NO. 732 OF 2023

The New Milan Co-operative Housing Society ...Petitioners
Limited and Others

Versus

Haresh V. Kagrana HUF thru. Its Karta Mr. ...Respondents
Hargesh V. Kagrana and Ors.

Mr. Jayesh Joshi for Review Petitioner in RPA/3/2025 (original Respondent No.5 in AO)

Mr. Atul Damle, Senior Advocate a/w Mr. Rohit Joshi for the Review Petitioners in RPA/4/2024 (Original Respondent Nos. 1 to 4 in AO)

Mr. Rahul Soman a/w Mr. Suyash More i/b Rahul Jain for Respondent Nos. 1 to 8 in both Review (original Appellants in AO).

CORAM : M.M. SATHAYE, J.

DATE : 11th MARCH 2025

(IN CHAMBER)

P.C. :

1. Heard learned Counsel for the parties. The Review Petitioners are original Defendants and Respondents in Review Petitions are Plaintiffs in the suit. Review is sought of order dated 06.01.2025 passed by this Court in Appeal from Order No. 732 of 2023 alongwith Interim

Application No. 15014 of 2023.

2. Learned Senior Advocate Mr. Damle has urged two grounds for review of the said order. The first ground is that the order under review grants injunction beyond the scope of the motion which was the subject matter in the Appeal from Order. The second ground is that this Court has considered an additional affidavit affirmed on 12.06.2024 filed by the original Plaintiffs placing on record a report dated 03.06.2024 by an Architect. It is submitted that this additional affidavit and the Architect's report was not part of the record before the Trial Court and the same could not have been considered by this Court, without following procedure under Order 41 Rule 27 read with Order 43, Rule 2 of the Code of Civil Procedure, 1908 about additional evidence.

3. Learned counsel for the Respondents i.e. original Plaintiffs has supported the order under review, submitting that even *de hors* the consideration of additional affidavit and Architect's report, this Court has concluded that the Plaintiffs are entitled to interim relief. He has fairly conceded that the additional affidavit and the Architect's report was not part of the record before the Trial Court. It must be noted that learned Counsel for the original Plaintiffs had indicated this fact fairly even during hearing of the Appeal from Order.

4. So far as the first ground raised by the learned Senior Advocate for the Review Petitioners about impugned order traveling beyond the scope of the motion is concerned, it is noted that under prayer clause (b) in the motion, an injunction against the Defendants was sought from proceeding with the redevelopment without having

area of each individual flat ascertained 'strictly on the basis of sanctioned plan'. This Court while passing order under Review, has considered the sanctioned plan, which was and is admittedly on record under paragraphs 13 to 16, and has come to a conclusion that 4 *otlas* on the ground floor of Flat Nos. 1 to 4 and 2 attached terraces of flat nos. 13 & 14 on the 3rd floor, are shown in the sanctioned plan as exclusively available to the respective flats. It is therefore found fit that unless those *otlas* and attached terraces are considered during redevelopment, the original Defendants i.e. the Society and the Developer should be restrained. Accordingly the order under review is passed. In that view of the matter, there is no merit in the argument that order under review travels beyond the scope of the prayer in the motion.

5. So far as the second argument about consideration of additional affidavit and Architect's report is concerned, since it is admitted position that the same was not part of the Trial Court's record and further considering that the procedure under Order 41 Rule 27 was not followed before hearing of the Appeal from Order, the said argument deserves to be accepted. Therefore, to the extent of consideration of the said additional affidavit and Architect report, the impugned order needs to be reviewed.

6. Hence, the following order is passed.

(a) The Review Petitions are partly allowed.

(b) Paragraph No. 17 and first line in paragraph 18 of the order dated 06.01.2025 stand deleted. Rest of the order is confirmed.

(c) The said order be accordingly corrected and uploaded.

7. The Review Petitions are disposed of in the above terms with no order as to costs.
8. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)