

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 3845 OF 2025
WITH
INTERIM APPLICATION NO. 2831 OF 2025

Ashwin Gada .. Appellant
Versus
Dinesh Naram Patel .. Respondent

.....
• Mr. Ram Upadhyay, Advocate for Appellant

.....
CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 2, 2025

P. C.:

INTERIM APPLICATION NO. 2831 OF 2025 :-

1. Heard Mr. Upadhyay, learned Advocate for Appellant.
2. Perused the Interim Application. For the reasons mentioned therein in paragraph Nos. 5 to 9 which are *prima facie* believable, Interim Application is allowed in terms of prayer clause (a). Delay of 28 days in filing the Appeal from Order (AO) stands condoned.
3. Interim Application is disposed.

APPEAL FROM ORDER (ST) NO. 3845 OF 2025:-

4. Present Appeal from Order (AO) is taken up for hearing forthwith. Appellant / Plaintiff has filed RCS No 187/2024, *inter alia*, seeking declaration that development agreement entered into between the Developer and Society is illegal and for direction to cancel the said

development agreement forthwith as also seeking to ensure that no financial losses are incurred by members of the Society. This is the sole relief in the Suit plaint. Insofar this prayer is concerned, the same has become infructuous in view of the submissions advanced by Mr. Upadhyay today. He would candidly inform the Court that development has already commenced and eight storeys out of the 10 storeys building being developed has already been constructed by the Developer.

5. Learned Trial Court while deciding Application below Exh. 5 has passed a detailed order dated 05.10.2024 (appended at Exh. A, page Nos. 41-68 of the AO). In view of the cogent reasons given therein the request made by Appellant / Plaintiff seeking stay on entire development therefore stands rejected. Reasons given by learned Trial Court are *prima facie* on the ground that whatever would be the entitlement of the members of the Society as per the development agreement, the members would be entitled to the same. However Mr. Upadhyay has argued and persuaded the Court to consider his grievance that Plaintiff has not been given extra area promised for his commercial shops and it is to the detriment of the Plaintiff because Plaintiff is the owner of five shops in the development. He would submit that in that view of the matter, the substantive relief of challenging the development has been prayed for in the Suit plaint.

On being specifically asked, Mr. Upadhyay would submit that seeking extra area over and above the entitled area is his only grievance for filing the Suit.

6. Mr. Upadhyay also informs the Court that PAA Agreement has been executed and registered by the Plaintiff with the Developer in respect of alternate area / accommodation. Grievance of Defendants is that Plaintiff has approached the Trial Court and principally sought relief that can only be granted and allowed at the trial. The request made by Mr. Upadhyay to consider the case of Plaintiff on rejection of Exh. 5 Application on above submissions cannot be granted by this Court. It is *prima facie* seen that insofar as development of the property is concerned, learned Trial Court has taken pains to explain the entire development with respect to the rights of the Society and all its members. The documentation which has been relied upon is also adhered to and discussed in the order while rejecting the Exh. 5 Application. Once the order below Exh. 5 is a well reasoned order and more specifically so as can be seen on reading of the said order, the request made by Mr. Upadhyay that the said findings are contrary to the record can only be gone into at trial. Summary hearing in the AO on the basis of the documents and seeking imprimatur of this Court on facts would render the trial completely infructuous. In that view of the matter, keeping all contentions of the Plaintiff expressly open and

with direction to learned Trial Court not to get influenced by any of the observations made in the Exh. 5 order which are based on *prima facie* observations of the Court, the trial shall be proceeded with strictly in accordance with law and on the basis of the evidence that shall be led by the parties.

7. All contentions of the Plaintiff are expressly kept open.
8. Impugned order dated 05.10.2024 stands upheld and confirmed. Appeal from Order fails.
9. Appeal from Order is disposed.

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[MILIND N. JADHAV, J.]

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