

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12120 OF 2025

IN

FIRST APPEAL NO. 178 OF 1994

M/s. Krypton Constructions

...Applicant/ Ori.
Respondent No.3

In the matter between:

Jankibai Sitaram Chavan (deceased) through
LRs. and Ors.

...Appellants

Versus

Municipal Corporation of Greater Mumbai and
Ors.

...Respondents

SNEHA
NITIN
CHAVAN

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SNEHA NITIN
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Date: 2025.10.01
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Mr. Karl Tamboly a/w Mr. Reehan Ajmerwala, Mr. Tushar Hathiram, Ms. Rashida Savliwala, Ms. Megha Sanghavi i/b Dhruve Liladhar & Co. for the Applicant and for original Respondent No.3.

Mr. Shailendra Kanetkar a/w Mr. Shivraj Patane for the Ori. Appellants.

Mr. Pradeep Patil i/b Komal Punjabi for Respondent/BMC.

CORAM : M.M. SATHAYE, J.

DATE : 30th SEPTEMBER, 2025

P.C. :

1. Heard learned counsel for the parties.

2. This is an application by Respondent No.3 in appeal, for modification of order passed by this Court on 08.09.2025 in Interim Application No. 8692 of 2025. By the said order, this Court has disposed of the application by rejecting the prayer for interim injunction made by the original Appellant and permitting Respondent No.3/Developer to proceed with the development/construction and sale of constructed units on the suit property on a condition of filing undertaking as more particularly described in paragraph 26 of the said order.

3. Mr. Tamboli, learned counsel for Applicant, submits that since

the undertaking directed to be filed, makes the development and constructions on the suit property as well as sale of the constructed units subject to the final outcome of the appeal, better clarity is required as to what the Court means by subject to final outcome of the appeal. He submits that the order can be modified as prayed in prayer clause (a) of present application to better balance the interest of all parties.

4. Learned counsel Mr. Kanetkar appearing for the original Appellant, on the other hand, submitted that this modification will have to be considered as per provisions of Order 39 Rule 4 of the Code of Civil Procedure, 1908, especially second proviso thereof, whereunder it is provided that order shall not be varied except where such variation is necessitated by a change in the circumstances or unless the Court is satisfied that order has caused undue hardship to the party involved. He submits that there is no change in circumstances and parties were fully heard. He informs that original Appellants have already challenged the said order dated 08.09.2025 before the Hon'ble Supreme Court by filing necessary proceeding.

5. I have considered the submissions. Indeed, there is no change in circumstances and parties were fully heard before passing the said order. Since, the final outcome of the appeal cannot be predicated at this stage, and since the final outcome can also not been placed into slots of possibilities, in my view, modifying the order at this stage in any manner, including as suggested by the Applicant, would result into passing a speculative order, which this Court does not intend to do.

6. In the aforesaid facts and circumstances and for the reason indicated above, the application is rejected.

(M.M. SATHAYE, J.)