



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL NO. 2 OF 2024

Anantray R. Doshi (HUF) and Ors.

.. Appellants

Versus

Lok Everest Co-operative Housing
Society and Ors.

.. Respondents

Mr. Ziyad Madon, a/w Mr. Mahek Kamdar, Mr. Hersh Choksi, i/b
Kanga and Co., for the Appellants.

Dr. Abhinav Chandrachud, a/w Mr. Rajendra Mishra, Mr.
Mukesh Gupta, Mr. Raj Gupta, Mr. Abhishek Kambli, Ms. Asmita
Yadav, i/b Solicis Lex, for Respondent No. 1.

Ms. Minal Parab, for Respondent No. 2.

Mr. Rohit Gaikwad, a/w Ms. Pooja Yadav, i/b Ms. Komal Punjabi,
for Respondent No. 3 / MCGM.

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

DATE: NOVEMBER 7, 2025

P. C.

1. The above Appeal has been filed challenging the impugned order dated 22nd February 2022, passed by a learned Single Judge of this Court. By the impugned order, the Interim Application filed by the Applicants (3rd

party interveners) was dismissed. By this Interim Application, the Applicants (Appellants before us) sought the relief of being impleaded in the above Suit.

2. The learned Single Judge, after hearing parties at great length, by a detailed and a well-reasoned order dismissed the Interim Application. The learned Single Judge, after a detailed discussion, came to the conclusion that the Applicants (Appellants) were neither necessary nor proper parties in the above Suit, and more so considering that the Suit lay a challenge to the validity of the Agreement of Assignment of Development Rights dated 29th March 2018 between the erstwhile developer (M/s. Lok Housing and Construction Limited) and the 1st Defendant/the new developer (M/s. Jaydeep Developer). The learned Single Judge came to the conclusion that 3rd party allottees such as the Applicants have their independent remedies against the erstwhile developer, and cannot claim to have a legitimate and bonafide right in seeking impleadment in the above Suit.

3. Mr. Madon, the learned Counsel appearing for the Appellants, submitted that the Appellants would be vitally affected if the reliefs in the above Suit are granted. He submitted that one of the reliefs sought in the above Suit is to restrain the 1st Defendant from carrying out the construction of Wing C-5, in which the Appellants are allottees from the erstwhile developer. If this construction is stalled, the Appellants would not get their

allotted premises. In these circumstances, the Appellants are certainly vitally affected parties, and hence, have a bonafide right to be impleaded in the above Suit to resist the reliefs sought by the Plaintiffs.

4. Having heard Mr. Madon, as well as Dr. Chandrachud appearing on behalf of the original Plaintiff, we find no merit in the challenge to the impugned order. The discussion of the learned Single Judge on this aspect can be found from paragraph 18 onwards. The learned Single Judge, in our view, has correctly examined the averments in the Plaint (as more particularly set out in paragraph 19 of the impugned order) and has thereafter come to the conclusion that the Appellants are neither necessary nor proper parties to the above Suit.

5. The reason for this is not far to see. The main relief sought in the Plaint is for a declaration that the Agreement of Assignment of Development Rights dated 29th March 2018 from M/s. Lok Housing Construction Limited (erstwhile developer) to Defendant No.1 (new developer) is contrary to the Maharashtra Ownership Flats Act, 1963 (for short “**MOFA**”) and hence null and void. The real cause of action in the Plaint is that the erstwhile developer had, without the knowledge and consent of the Plaintiff, and in utter breach of disclosures and representations, illegally granted rights to Defendant No.1 for the construction of the building (Wing C-5) on a plot admeasuring 2842

sq. meters. It was Plaintiff's case that under MOFA, the flat purchasers/members of the Plaintiff society have to give their consent for construction of the said building or for Assignment of Development Rights, and absent that, the erstwhile developer had no rights to grant development rights to Defendant No.1. Once this is the frame of the Suit, we are in complete agreement with the learned Single Judge that the Appellants herein, and who are allottees of certain tenements in Wing C-5 which is yet to be constructed, cannot be termed as parties who would either be necessary or proper to decide the lis in the above Suit.

6. We find that in the impugned order, the learned Single Judge has also correctly distinguished the judgments cited on behalf of the Appellants. We need not once again reiterate why those judgments would be inapplicable to the facts of the present case. The same have been adequately dealt with by the learned Single Judge.

7. For all the above reasons, we find no merit to the challenge to the impugned order. The Appeal is accordingly dismissed. However, in the facts and circumstances of the present case, there shall be no order as to costs.

8. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by fax
or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]

[B. P. COLABAWALLA, J.]