

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 1629 OF 2025
WITH
INTERIM APPLICATION NO. 6940 OF 2025

Amanul Haq S/o. Nurul Haq alias Noor Mohd. & Appellants
Ors. .. (Org. Plaintiffs)

Versus

Maharashtra Housing & Area Development Respondents
Authority & Ors. .. (Org. Defendants)

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• Mr. M.V. Holmagi, Advocate for Appellants

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 4, 2026

P. C.:

1. Heard Mr. Holmagi, learned Advocate for Appellants i.e. Org. Plaintiffs.

2. Due to the exigency mentioned by Appellant No. 1 who was personally present in Court on 30.04.2026, present Appeal from Order (AO) is listed today.

3. Order impugned in the present Appeal from Order is order dated 21.08.2024 passed by learned Bombay Civil Civil Court at Mumbai while disposing of Notice of Motion No. 3153 of 2023. Said Motion was filed for recall of orders dated 10.07.2015 and 06.08.2015. The Application for recall of the order was in fact allowed but subject to payment of costs. Costs were already paid by

the Plaintiffs. Evidence of Defendants is completed. It is *prima facie* seen from the record of the case that evidence of Plaintiffs despite being allowed by Court to be led has not been progressed with. Three opportunities were given to the Plaintiffs which find mention in the impugned order. Ultimately, Court had no option than to reject the Notice of Motion for leading further evidence.

4. Mr. Holmagi, on instructions, would submit that if Plaintiffs do not lead evidence, their case will be weakened. He would submit that Trial Court has also permitted Plaintiffs to lead evidence. Hence, he would submit that Plaintiffs would like to lead evidence of the officer of MHADA relating to status of the subject flat which is the *lis* between the Plaintiffs and Defendants. Both parties claim to be legal heirs of the original deceased person to whom the flat belonged to.

5. Considering the request made by Mr. Holmagi and the pleadings in the present case, no purpose whatsoever would be served by keeping the present AO Pending in this Court. In that view of the matter, impugned order dated 21.08.2024 stands set aside. One final opportunity is directed to be given to the Plaintiff by the learned Trial Court to lead evidence. Plaintiffs shall file affidavit of evidence of their witnesses within a period of eight weeks from today. If Plaintiffs desire to lead evidence of any officer of MHADA / SRA in the present case, they shall make appropriate Application to the Trial Court for

issuance of summons in accordance with law which shall be considered by the Trial Court.

6. Needless to state that it will be the discretion of the Trial Court to give time to the Plaintiffs to lead evidence further beyond 8 weeks. If Plaintiffs do not lead evidence and fail, it will be at the discretion of the Trial Court to close their evidence and accordingly proceed further with final hearing of the Suit proceedings which has been pending since long in the Trial Court. Pending Interim Applications, if any, filed by Plaintiffs shall be considered by Trial Court in accordance with law and decided.

7. This Court has not given any imprimatur on merits of the matter which shall be noted by the Trial Court and all contentions of both sides are expressly kept open by the Trial Court.

8. With the above directions, Appeal from Order is disposed. Interim Application is disposed.

[MILIND N. JADHAV, J.]

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