

IN THE COURT OF SMALL CAUSES AT MUMBAI
(APPELLATE BENCH)

Order Below Exhibit – 15

IN

Appeal No.250 of 2022

IN

Exhibit-23

IN

R.A.E. Suit No.388 of 2020

[CNR No. MHSCA1-000918-2022]

Chandrabhaga Co-operative Housing)

Society Limited

) Appellant

(Orig. Applicant / Intervener)

Versus

1) Mrs. Rupali Rohidas Todankar)

& others

) Respondents

(Respondents Nos.1 to 3,

Orig. Plaintiffs and Respondent

No.4, Orig. Defendant)

Appearance :

Mr. Prashant V. Malik, Id. Advocate for the Appellant;

Mrs. Bijal A. Chowlera, Id. Advocate for Respondents Nos.1 to 3;

Ms. Jaishree P. Hilal, Id. Advocate for Respondent No.4

**Coram:- S. T. Soor, Addl. Chief Judge,
and
K. R. Rajput, Judge
Court Room No.2,
Date: 03/12/2022**

O R D E R [K. R. Rajput, Judge]:-

Read the application and say. Heard learned Advocates for all the concerned at length to their satisfaction. Perused the available record. At the outset, it is pertinent to note that the present Misc. Appeal came for admission on 20/10/2022 before this bench wherein the appeal came to be admitted and the order of issuing notices to the respondents came to be passed. It is further pertinent to note that, as the learned Advocate for the appellant submitted that there was huge urgency, hence, short service was also allowed and the matter was kept immediately on 21/10/2022. The record further shows that the appellant did not pay process fees due to which notices could not be sent for service upon the respondents. It further reveals that on 21/10/2022 learned Advocate Mrs. Bijal A. Chowlera appeared for respondents Nos.1 to 3 by filing her memo of appearance. The roznama shows that respondent No.3 Shri. Sachin Rohidas Todankar was also present on 21/10/2022. It further reveals that the learned Advocate for the appellant made an endorsement on Exhibit-1 that the appellant was not seeking any relief against Smt. Bhanumati Mansukhlal Lalan (respondent No.4). In view of the said endorsement, an order came to be passed below Exhibit-1 on 21/10/2022 itself thereby dismissing the appeal against respondent No.4. The roznama further shows that the learned Advocate for the appellant had also moved an application (Exhibit-10) seeking stay to

which handwritten say was given by respondents Nos.1 to 3 and arguments were also advanced by both the learned advocates at length and thereafter, it was at around 1.08 p.m. when the said stay application was not-pressed by the appellant and accordingly necessary order was passed for disposing the stay application (Exhibit-10). Thereafter, the matter was listed for hearing the appeal on 04/11/2022. Thus, the record is crystal clear to show that there was no question of issuing notice to respondent No.4 as no relief was claimed by the appellant and in view of the endorsement, proper order was passed. Hence, there is no substance in the present application to the extent of the contents in paragraph No.3 of this application that the order was passed without assigning any reason and/or passing detailed order.

2. It is to be noted that, firstly, process fees was not paid by the appellant due to which notices could not be sent for service and secondly, in view of the endorsement, the order was passed below Exhibit.1 and thus, the same is just and proper. It is further to be noted that the say filed by the appellant society below Exh.16 Paragraph B line No.5 that, “therefore dismissal order might be passed in the Roznama dated 4th November, 2022 published on the website. However, the same was not found in the Original Roznama pasted in the record of this Hon'ble Court also the same was pointed out to the Advocate of the Respondent No.4” is certainly against the true facts and circumstances. No copy of the alleged roznama on the website is filed along with the reply. The available roznama on the record is in detail and clear. Hence, the said contents in the reply below Exhibit.16 are unwarranted and contrary to the true facts and circumstances. May it be, Paragraph No.N of the reply Exhibit.16

speaks that the appellant society has nowhere curtailed right of respondent No.4 and that respondent No.4 has all the rights to put forward their say/reply for the appeal and to participate in the hearing of the appeal. Thus, it is crystal clear that the appellant society, in hurry, has firstly made endorsement of not claiming any relief against respondent No.4 to which the appeal came to be dismissed against respondent No.4 and subsequently, when respondent No.4 has filed this application without verifying the proper details, it is the appellant who is now giving reply that the appellant has no objection for hearing respondent No.4. All the said exercise on the part of the appellant has consumed valuable time of this Court. May it be, respondent No.4 is party to the main suit and she also contested the impugned application and is also party to the present appeal and therefore, no harm would be caused in hearing respondent No.4. Moreover, as the appellant has also given no objection, hence, it shall be justifiable to hear respondent No.4 in the present appeal. Accordingly, respondent No.4 is permitted to participate in the present appeal and to defend the appeal on merits. Accordingly, the present application (Exhibit-15) stands disposed.

I agree,

(S. T. Soor)
Addl. Chief Judge
Court Room No. 2
03/12/2022

(K. R. Rajput)
Judge
Court Room No. 2
03/12/2022

Order passed on : 03/12/2022
Order typed on : 03/12/2022
Checked and signed on : 03/12/2022

