

**Order Below Exh.5 in CC/414/2023**  
**( Ms. Mumma Construction Pvt. Ltd. Vs. Hubton Viva Premises CHSL)**

1. Perused the interim application and say filed by opponents. Heard Disputant and Opponents advocates at length. Considering the rival submissions of both sides following points arise for my consideration.

<b><u>Sr. No.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS.</u></b>
1)	Whether the disputant established prima facie case?	Partly affirmative
2)	Whether balance of convenience is in favor of disputant?	Partly affirmative
3)	Whether disputant will suffer irreparable loss if interim injunction is not granted in their favour ?	Partly affirmative
4)	What Order?	Application is partly allowed

**REASONS**

**As to Point No.1 to 3**

2. Ld. Advocate for disputant orally argued before me and filed written arguments below Exh. 23. Disputant submitted that the Disputant is registered company and lawful owner of Unit No. G/1 and 101 alongwith 4 mechanical car parking spaces ( in short will be referred as 'said property') as mentioned in the agreement of sale. Opponent No.01 is the society and Opponent no.2 is the builder who constructed the said building. The disputant is in possession of unit alongwith the parking space from the year 2012. Till 2023 the disputant were in continuous possession of the said property. However on 14.08.2023 opponent no.01 gave threats and entry of the disputant was stopped by the bouncers. Thereafter Opponent No.01 issued circular dtd. 14.08.2024 and obstructed the disputant from parking car. The

provisional committee of the Opponent No.01 formed in the First General Body Meeting dtd. 29.05.2021 has been already expired its term in May 2022. However, the said provisional Committee is still in continuation as there is no election called or procedure adopted to form new managing committee of the opponent society. Instead of calling fresh elections Jaleshwar Singh secretary of the expired provisional committee arbitrarily preferred to call Special General Body Meeting dtd. 08.10.2022 and replaced Sudhir Jhunjunwala, Mayur Shaha, Carl Vaz, Vishal Gupta Jayanti Kamat with Manohar Rohra, Bharat Shaha, Hardik Hundia, Rajkumar Dubey and Mehr Ashr. This proves that present managing committee is illegal.

3. Adv. for the Disputant further argued that unauthorized managing committee without any resolution levied penalty charges of Rs. 5000/- in the Disputants maintenance bill of July to September 2023. Hence, present dispute is filed. By filing interim application disputant prayed to pass temporary injunction from obstructing the parking of disputant. Further prayed to direct the office bearers of opponent no.01 society to vacate the premises, to maintain the status quo regarding circular dtd. 14.08.2021 and to allow disputant to enjoy their rights on properties and parking rights.

4. Ld. Adv. for the Opponent No.01 also orally argued and filed written arguments below Exh. 17 and submitted that the interim prayers are final in nature and application needs to be dismissed. Prayers sought by the disputant are barred by law. No reason quoted by the disputant for silence over 18 months on the issue of provisional managing committee. The entire election took place in the presence of returning officer. Relief pertaining to the provisional managing committee is not within the jurisdiction of this Court. As per judgment in Nahalchand Laloochand Pvt. Ltd. Vs. Panchali CHSL developers cannot sell open spaces and stilt car parking areas. Hence, parking sold by the developer is illegal. Utilization of open space by the

disputant is illegal encroachment by the disputant and by their licensee hence, several requests were made to the disputant not to park their vehicle in the open space. Act of disputant is endangering life of 196 unit holders of the society. . Hence, in the AGM decision was taken by the society to impose penalty of Rs. 5000/- to the Disputant. But disputant continued to use open space. The disputant has granted said premises for operation of Maruti Suzuki Showroom and getting huge license fee out of such grant, but such showrrons attract customers by displaying their vehicles outside the showroom for which they pay huge license fees. The disputant is falsely claiming the open space in contravention of bye laws. As per Fire department conditions no covered parking shall be allowed in compulsory open space of the building. Balance of convenience is in favor of opponent menenbers. Disputant not came with clean hands. No prima facie case is in favor of the disputant. Hence, prayed to reject the application.

5. Ld. Advocate for the Opponent no.03 filed written arguments below Exh. 20 and orally submitted that after the sell of building and formation of the society Opponent no.02 is not necessary party and dispute is barred by mis-joinder of necessary parties. The disputant is enjoying the possession of the said premises alongwith car parking from the date of possession. Since the society has taken the charge of the affairs of the building developer has no role. Hence, prayed to dismiss the application against the opponent no.02.

6. Perused the application and say. Perusal of dispute and interim application shows that the disputant raised two issues. One is pertaining to the parking and other is pertaining to the provisional managing committee. Lets deal with two issues one by one.

7. On the point of the parking it is admitted fact that opponent no.02 sold the parking to the Disputant. It is matter of question that whether the developer can

sold such parking to the member or not. Record further shows that the disputant is in possession of the suit premises alongwith parking since the year 2012. It is contention of the disputant that they were peacefully enjoying the possession of the

**8.**

**9.** not to part tw orally argued and filed written arguments below Exh. 22 and submitted that disputants are seeking the problem of leakage and slippage since many years and always approach the society pertaining to the leakage problem and to the concerned flat owner also. But no efforts were taken Ld. asto resolve the problem faced by disputants. Hence the present dispute is filed. The problem of leakage became worse when opponent no. 1 and 2 turned on water connection in some part of their flats. The photographs on record show the urgent ceiling repair work due to leakage. There is continuous water leakage. After multiple requests also, opponent no. 1 &2 failed to make the repairs. The conditions may lead to serious injury or death. Considering the upcoming monsoon, prayed to allow the interim application.

**10.** Ld. Adv. For opponent no. 1 and 2 orally argued and also filed written arguments and submitted that the dispute is not maintainable against opponent no. 1 & 2. Since 1987 disputants have never done any repair in their flat. On contrary, opponent no. 1 and 2 carried out entire piping and drainage repair work in the year 2019. Disputants suppressed this fact. Opponent no.4 is the owner of flat no. 23-P at the time of filing of present dispute and not made him as party to the dispute. Disputants are not taking any coercive measures to resolve the leakage issue in their own flat. Therefore, no prima facie case is in favor of disputants. Hence prayed to reject the application.

**11.** Ld. Adv. For opponent no. 3 submitted that the application is not within limitation. The present dispute is between the disputants and the other 2 members. They have to solve the problem mutually. Society has taken corrective measures to resolve the water leakages issue faced by the disputants. The opponents no. 1 & 2 are the owners of flat no. 22 and 23P and not 22P. Flat no. 23 P is sold to opponent no. 1 and 2 to Mr. & Mrs. Roy who were senior citizens and the reason for selling was frequent harassment from the disputants on same issue. Further this court is having no jurisdiction to try this dispute. Hence prayed to reject the application.

**12.** Considering the rival contentions, in short it is case of disputants that they are owner of flat no. 17 of opponent no. 3 society. Opponent no. 1 & 2 are the members of opponent no.3 society and are the owners of flat no. 22 and 22P. It is further alleged that opponent no. 2 sold flat no. 22P to Mr. Vitthal Moolya. Hence by amendment opponent no.4 is added as party to the dispute. Before going into the merits of the case, it is pertinent to note that in the dispute the opponent no. 1 & 2 are noted as owners of flat no. 22 and 22P. However, opponent no. 1 & 2 in their WS submitted that they are the owners of flat no. 22 and 23P. Opponent no. 3 in their WS also stated that the opponent no. 1 & 2 are the owners of flat no. 22 and 23P. In fact in the Written arguments also the disputant referred opponent no. 1 and 2 as owners of flat no.22 and 23 P. Hence while deciding the application flat no. 22P is referred as flat no. 23P. In spite of correct knowledge, the disputant failed to make the necessary amendment regarding correct number of flats referred for opponent no. 1 and 2. It is also important to note that in the title clause of dispute opponent no. 3 is referred as society. However incorrectly in the dispute, opponent no. 2 is referred for society. This mistake is also not amended by the disputants.

**13.** Now, coming to the merits of the case, it is contention of disputants that they are facing the problems since many years. However, exactly from which year

they are facing such problem is not mentioned in the dispute. Perusal of synopsis attached with the dispute mentions that disputants purchased the flat on 17/02/1987 and on 28/02/2016 they made a complaint regarding the leakage. The letter dtd. 29/06/2016 is filed by the disputants on record. In this letter also disputants submitted that since long time they are facing problem of leakage from the ceiling of their bathroom. In this letter also, exactly when the disputants for the first time faced the problem of leakages is nowhere mentioned in the letter.

**14.** As the matter is pertaining to the leakage hence the expert/engineer's report is required to be on record which can show the exact root cause for such leakages. However, no such report is filed by the disputants on record which can conclude the root cause of leakage.

**15.** The disputants only annexed the photographs of the ceiling. It shows the water sip-page and droplets. However, from the photographs the court cannot prima facie conclude the root cause of leakage and seepage faced by the disputants is from the flat of opponents only.

**16.** Record further shows that regarding the repair and seepage problems, the disputants also lodged complaint to MCGM in 2019. In view of the complaint on 29/01/2019 notice was issued to the opponent no. 1 and 2. But what was further done by MCGM is not mentioned by the disputants. In fact, as per disputants after the complaint with MCGM also, the problem was not solved.

**17.** On the contrary, it is a submissions of opponent no.1 and 2 that after notice of MCGM opponent no. 1 and 2 carried out repairing of entire piping and their flat. In view of that repairs the opponent no. 1 and 2 filed the copy of reply dtd. 10/06/2019 to the MCGM in which a list of activities carried out by owner of flat no. 23 P were shown. So the above reply filed by the opponents prima facie supports the

submissions of opponent no. 1 and 2 that they carried out the repairs. In-fact, the NC was registered by opponent no. 4 regarding threat given by disputants in respect to ongoing leakages problem.

**18.** The dispute clearly shows that there appears allegations of leakages from flat of other members. Disputants in interim application are praying to direct the opponents to carry out the necessary repairs to stop the leakage. However, as stated earlier, to give such a directions, firstly it is necessary to ascertain the root cause of leakage, for which it is necessary to conduct the trial. Without conducting the trial, it is impossible to give directions to opponents to carry out the required necessary repairs. Therefore prima facie case is not in favor of the disputants.

**1.** The disputants are facing the problems since long years specifically as per synopsis since 2016 and we are in the year 2025. If the disputants were facing the problem so seriously since the year 2016 then why they waited to file a dispute in the year 2023. There is no document available on record which shows efforts taken by the Disputants to stop the leakages instead of the complaints. The conduct of disputants does not show any urgency. Hence balance of convenience and irreparable loss is not in favor of disputants. Hence, I answered point no. 1 to 3 in negative and while giving answer to point no. 4 I proceed to pass following order:-

**ORDER**

1. Application is partly allowed.
2. The opponent No.01 by this interim injunction are hereby restrained from obstructing disputant / their tenant from parking their cars etc. on their allotted parking space no.01 and 2.
3. Other reliefs claimed by the disputant are hereby rejected.

**Sd /-**

Mumbai  
**Date : 12.06.2025**

**(S. V. Metil-Patil)**  
**Judge,**  
**Co-operative Court No.1, Mumbai.**