

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO. 27813 OF 2025
WITH
INTERIM APPLICATION NO. 11010 OF 2025

Ibrahim Babubhai Chokiya and Ors. ...Appellants
Versus
M/s. Westinrely Developers Pvt. Ltd. And Ors. ...Respondents

Mr. Sandeep Mourya with Mrs. Kavita Maurya a/w Simran
Vishwakarma for the Appellants.
Mr. Sanjeev Sawant a/w Mr. Abhishek Deshmukh and Ms.Samiksha
Mane for Respondent No.1.

CORAM : M.M. SATHAYE, J.
DATE : 12th AUGUST, 2025

P.C. :

1. This First Appeal is filed challenging the order dated 23.07.2025 passed in Notice of Motion No. 929 of 2025 in S.C. Suit No. 433 of 2025 by which the plaint is returned to the Appellants/Plaintiffs under Order VII Rule 10 of Code of Civil Procedure, 1908 ('CPC' for short) for presentation to proper forum.

2. Learned Counsel for the Appellant submits that under a *bonafide* belief that since the proceeding has come to an end, first appeal is maintainable, it is filed.

3. The order of return the plaint under Order VII Rule 10 of CPC is appealable under Order 43 Rule 1(a) of the CPC and as such appropriate proceedings are Appeal from Order.

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4. Learned counsel for the Appellant seeks liberty to convert the present First Appeal in Appeal from Order forthwith considering the urgency involved.

5. Learned Counsel for the Appellants has sought continuation of interim protection granted by the Trial Court on 23.07.2025, which is at page 520 of the compilation.

6. Learned Counsel for Respondent No.1/Developer has opposed continuation of interim protection contending that during the pendency of the suit, the statement which was made by Respondent No.1, was sought to be withdrawn on 21.04.2025, on which an order was passed, not permitting Respondent No.1 to withdraw the statement unilaterally. Thereafter, the impugned order was passed in July 2025. It is further submitted that according to Respondent No. 1, the Appellants have agreed for a shop on first floor and therefore, the statement made about shop in possession of the Appellants on the ground floor, should not be continued.

7. Learned Counsel for the Appellants then submitted that the impugned order is assailed on merits and plaint could not have been returned because proceedings under RERA are not available for the Appellants as per the prayers in the plaint. He, therefore, submits that if not statement of Respondent No.1, the interim protection granted by the Trial Court be continued. It is noted that under order dated 23.07.2025, the Appellants are protected by order of Trial Court and not by continuation of statement of Respondent No. 1. Protection is till tomorrow if 3 weeks are taken from 23.07.2025. If date of signing of impugned order is considered then the protection is till 20.08.2025.

8. Considering the fact that roster/assignment does not permit this Court to take up Appeal from Order, the Appellants are at liberty to carry out necessary amendment for conversion to Appeal from Order forthwith during the course of the day and move appropriate Court immediately. Necessary amendment can be carried out during the course of the day.

9. Learned Counsel for the Appellants submits across the bar that 8 months' rent is not paid by the Developer, which position is disputed by learned Counsel for Respondent No.1/Developer.

(M.M. SATHAYE, J.)