

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.194 OF 2021
WITH
INTERIM APPLICATION NO.2091 OF 2019**

Prema Janardan Dhuru since deceased
through legal heirs
Leena Manek Chimegawe ...Appellant
Versus
M/s. Agarwal Builders and Developers
through its partner Shri Atul Agarwal ...Respondents

Mr. Rajesh Datar and Mr. Pralhad Paranjape, i/b. Mr. Manish Kelkar,
for the Appellant.

Mr. Vishal Kanade, Ms. Kausar Banatwala with Yash Dhakad, i/b.
Mr. Tushar Goradia, for the Respondent.

Mrs. Leena Manek Chimegawe, Appellant present in person.

Mr. Manek Chimegawe, husband of Appellant present in person.

CORAM : MADHAV J. JAMDAR, J.

DATED : 12th DECEMBER 2022

P.C. :

1. **At 2.40 p.m.:** This Second Appeal was heard in the first session from about 1:10 p.m. to 1:30 p.m. i.e. for about 20 minutes upto the lunch break. The matter was part-heard and when the Court resumed the matter in the afternoon session,

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Mrs. Leena Manek Chimegawe, Appellant and her husband Manek Chimegawe requested for adjournment on the ground that they want to engage some other Advocate. The said request is rejected for the following reasons:

(i) The Bombay High Court framed rules by exercising powers under Section 34(1) of the Advocates Act, 1961. The said rules are to be found in Schedule VII of the Appellate Side rules and are very relevant for deciding this request made by the Appellant.

(ii) Rule 1 (a) provides that "Advocate" shall include a firm of Advocates. Rule 1(b) provides that "Court" shall mean the High Court of Judicature at Bombay and the Courts subordinate thereto.

(iii) Sub-Rule (4) and Sub-Rule (5) of Rule 8 of said Rules are very significant and the same read as under:

"8(4) When an Advocate who has filed a Vakalatnama for a party wishes to withdraw his appearance he shall serve a written notice of his intention to do so on his client at least seven days in advance of the case coming up for hearing before the Court. Leave of the Court to withdraw appearance may also be applied for if the client has instructed the Advocate to that effect.

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The Advocate shall file a note in writing requesting the Court for permission to withdraw appearance and shall also file along with the note the letter of the client instructing him to withdraw his appearance or a copy of the intimation given to the client as above together with its written acknowledgment by the client. **The Court if it is satisfied that no inconvenience is likely to be caused to the Court or the client may permit the Advocate to withdraw his appearance and while permitting the Advocate to do so may also impose such terms and conditions as it may deem proper either in public interest or in the interest of the parties.**

8(5) A party who wishes to discharge the Advocate engaged by him may apply to the Court for an order of discharge by following a similar procedure and the Court if it is satisfied may pass order discharging the Advocate and while doing so impose such terms and conditions as it may deem proper.”

(Emphasis added)

Thus, it is clear that Sub-Rule (4) of Rule 8 gives power to the Court to reject request for discharge if it is satisfied that by such request inconvenience is likely to be caused to the Court. This matter is part-heard and the same has been argued for about 20 minutes and in the midst of the hearing this request is made. Thus, I am rejecting the said request.

2. It is also significant to note that, apart from the

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inconvenience of the Court, this also affects dignity of an Advocate who appears in the matter and making his submissions. Advocates are the officers of the Court. The assistance rendered by Advocates to the Court plays very important role in dispensation of justice. An Advocate has duty to the Court, duty to the client, duty to opponent and duty to colleagues. It is the duty of an Advocate fearlessly to uphold the interest of his client by all fair and honourable means without regard to any unpleasant consequences to himself. However, it is required to be noted that an Advocate is not mouthpiece of his client and he has to argue the case fearlessly in the best interest of his client. When Mr. Datar, learned Advocate is advancing submissions in the best interest of his client, in the midst of hearing request made by the Appellant is totally uncalled for. Therefore, this request is rejected. However, after arguments are concluded, in the interest of justice I will grant liberty to the Appellant to file written submissions within a period of one week from today and thereafter I will pass the further order.

3. **(At 3.25 p.m.):** After above order is passed, Mr. Datar

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continued with his submissions as per the direction of this Court. He pointed out various factual aspects and also pointed out the various terms and conditions of both the agreements dated 2nd November, 1993 at Exh. **27** and Exh. **28** respectively. He pointed out relevant findings recorded by the learned Trial Court and learned First Appellate Court. He also submitted about the substantial questions of law involved in this Second Appeal. After Mr. Datar, learned counsel completed his submissions, I have heard Mr. Kanade, learned counsel appearing for the Respondent. Mr. Kanade also pointed out various clauses of both the aforesaid agreements and also he relied on various findings recorded by the learned First Appellate Court.

4. The Second Appeal is admitted on the following substantial questions of law:

- i. Whether the learned First Appellate Court has properly interpreted the agreement dated 2nd November 1993 (Exhibit-**27**) and the second agreement dated 2nd November 1993 (Exhibit-**28**)?
- ii. Whether effect of 2nd agreement dated 2nd November, 1993 (Exh.27) is to completely nullify the first agreement dated 2nd November, 1993 (Exh.**28**)?

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iii. Whether it is necessary to read harmoniously the terms and conditions of both the agreements dated 2nd November, 1993 at Exh. 26 and Exh. 27 respectively?

iv. Whether the impugned Judgment and Decree of the learned First Appellate Court is contrary to the oral evidence of the Appellant and the Respondent?

5. By order passed at 2.40 p.m., I have granted liberty to the Appellant to file written submissions, however, since I am admitting the Second Appeal, the said written submissions are not required at this stage.

[MADHAV J. JAMDAR, J.]

Note: This order is modified by Speaking to the Minutes of order dated 19th January 2023. The corrections are shown in paragraph Nos. 3 and 4 in bold.