

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (L) NO.16440 OF 2025
IN
SUIT (L) NO.16439 OF 2025**

Fortress Holdings Private LimitedApplicant
IN THE MATTER BETWEEN	
Fortress Holdings Private LimitedPlaintiff
V/S	
Dhayana Buildcon Private Limited & Ors.Defendants

Mr. Ravi Kadam, Senior Advocate and Mr. Simil Purohit, Senior Advocate with Mr. Aditya Shiralkar, Ms. Disha Shetty and Ms. Jyothi Tated i/b M/s. Wadia Gandhi & Co. *for the Applicant/Plaintiff.*

Mr. Ashish Kamat, Senior Advocate with Mr. Yash Momaya, Mr. Parag Kabadi, Ms. Falguni Thakkar and Ms. Anshita Sethi i/b M/s. DSK Legal *for Defendant Nos.1, 2 and 4.*

Mr. Pravin Samdani, Senior Advocate with Mr. Mani Thevar i/b M/s. Ganesh & Co. *for Defendant No.6.*

Mr. Rohit Gaikwad i/b Ms. Komal R. Punjabi *for Defendant No.8/MCGM.*

**CORAM : SANDEEP V. MARNE, J.
DATE : 7 OCTOBER 2025.**

P.C.:

1. The Interim Application is filed seeking following prayers:

“(a) that pending the hearing and final disposal of the captioned Suit. this Hon'ble Court be pleased to stay the effect and operation of the Impugned AGM Notice dated 29th May, 2025 (being Exhibit P to the Plaintiff) and restrain the Defendant Nos. 1 to 6 from holding the annual general body meeting of Defendant No. 7 condominium on 31 May, 2025.

(b) Without prejudice and in the alternative to prayer (b) above, in the event Defendant Nos. 1 to 6 hold the purported Annual General Body Meeting of Defendant No. 7 condominium on 31 May. 2025. then pending the hearing and final disposal of the captioned Suit, this Hon'ble Court be pleased to stay the effect, operation and implementation of any purported decision and/or resolution taken or passed at such Meeting.

(c) that pending the hearing and final disposal of the captioned Suit, this Hon'ble Court be pleased to restrain Defendant Nos.1 to 4, their officers, agents. servants or any person acting through or under them. from acting contrary to the terms and conditions of the registered Declaration dated 20th March 2007 (Exhibit B to the Plaint) and Bye-laws (Exhibit C to the Plaint) or in any manner prejudice, harm, dilute or jeopardize the Plaintiff's rights and interest in the Plaintiff's Apartment, leasehold land and/or the building Bandbox House and/or the common areas and facilities thereof;

(d) that pending the hearing and final disposal of the captioned Suit, that this Hon'ble Court be pleased to restrain Defendant Nos. 1 to 4, their officers, agents, servants or any person acting through or under them. from in any manner dealing with, disposing of alienating, encumbering or creating any third party rights or interfering with the Plaintiff's Apartment, the Plaintiff's 15.88% share in the rights in the said Property, the Plaintiff's 15.88% share in the ownership of the said building Bandbox House, its common areas, amenities or facilities and/or any part or portion thereof and/or interfering with the Plaintiff's possession of its Apartment, the said leasehold Land and/or the said building Bandbox House in any manner whatsoever;

(e) that pending the hearing and final disposal of the captioned Suit. this Hon'ble Court be pleased to appoint a Court Receiver, as an administrator in respect of Defendant No. 7 Condominium under Order XL Rule 1 of the Civil Procedure Code, 1908 for the orderly management of Defendant No. 7 Condominium; and direct the Court Receiver to (I) to finalise the statement of outstanding dues payable by each of the co-owners of the apartments, (II) to finalise and have the accounts of Defendant No. 7 audited for the financial years 2020-2021, 2021-2022, 2022-2023, 2024-2025. (III) to prepare a list of apartment owners eligible to participate, stand and vote in the proposed elections of the Board of Managers of Defendant No. 7 condominium, (IV) upon finalization of the accounts, to conduct an AGM of all owners with prior 7 day intimation to all apartment owners, and (V) to conduct elections for appointment of the Board of Managers as per the Bye Laws of Defendant No. 7 Condominium at the AGM:

(f) that pending the hearing and final disposal of the captioned Suit, this Hon'ble Court be pleased to restrain Defendant Nos.1 to 4. their officers, agents, servants or any person acting through or under them. from acting contrary to the terms and conditions of the said Lease (Exhibit A to the Plaintiff);

(g) that pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to stay the implementation of the Impugned AGM Minutes and any purported resolutions passed therein:

(h) that pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to restrain Defendant Nos. 1, 2 and 4 (i.e. Mr. Asit Koticha, Mr. Preet Koticha and Mr. Rahul Mundada) from holding themselves out and/or acting as the President/ Chairman, Secretary and/or Treasurer and/or representing Defendant No. 7 condominium in any manner whatsoever.

(i) that pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to appoint an independent third party chartered accountant and an independent auditor and direct such third party chartered accountant and auditor to prepare and audit respectively the accounts of Defendant No. 7 after duly analyzing the statement of outstanding dues payable by each of the apartment owner and further direct all the apartment owners (i.e. Plaintiff and Defendant Nos. 1 to 6) to provide all the data and information as may be required by such appointed chartered accountant and an independent auditor for the aforesaid purpose;

(j) that pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to appoint any reputed third party property manager for undertaking maintenance of the said Property including collection of assessment charges, common maintenance charges, property tax and other municipal charges payable by each apartment owner and further, direct all the apartment owners (i.e. the Plaintiff, Defendant Nos. 1 to 6) to pay the fees to such appointed property manager in equal proportion;

(k) ad-interim relief in terms of prayers above;

(l) for costs

(m) for such order and further reliefs as the nature and circumstances of the case may require and which this Hon'ble Court deems fit and proper in the facts and asgircumstances of the case to grant.”

2. I have heard Mr. Kadam, the learned Senior Advocate appearing for the Applicant/Plaintiff, Mr. Kamat, the learned Senior Advocate appearing for Defendant Nos.1, 2 and 4, Mr. Samdani, the learned Senior Advocate appearing for Defendant No.6 and Mr. Gaikwad, the learned counsel appearing for Defendant No.8-MCGM.

3. I have considered the lengthy submissions canvassed by the learned counsel appearing for parties. One of the issues involved in the Suit is about validity of the elections held to the Board of the Condominium. The validity of elections is questioned on the ground *inter alia* that members in arrears of monthly contributions to the condominium have contested the elections and have voted therein. Instead of ascertaining whether any member was in arrears on the date of elections, the learned counsel appearing for rival parties after taking instructions from their respective clients have agreed to go for holding of fresh elections without prejudice to their rights and contentions. The learned Senior Advocates appearing for Plaintiff, Defendant Nos.1, 2 & 4 and Defendant No.6 have jointly submitted that detailed reasons need not be recorded for passing of the present order. They have jointly agreed for following arrangement to be made till the next date of hearing:

i) M/s. Kalyaniwalla & Mistry LLP, 2nd floor, Esplanade House, 29, Hazarimal Somani Marg, Fort, Mumbai – 400 001 are appointed as Accountants for the purpose of ascertaining the exact

liability of each member of the Condominium in respect of the period from 1 April 2020 till 30 September 2025;

ii) While ascertaining the liability of each member towards Condominium, the appointed Accountants shall take into consideration the liability/credit if any, standing in the names of Condominium members in the audited accounts as on 31 March 2020. The appointed Accountants shall adjust the amount of liability/credit as on 31 March 2020 and thereafter determine the liability of each Condominium member by taking into consideration the amount payable by the member every month from 1 April 2020 till 30 September 2025. It shall thereafter adjust the amounts paid by each Condominium members from time to time. The balance amount payable shall form the liability of each member to the Condominium. While determining the liability of each member, the appointed Accountants shall also take into consideration the interest payable on monthly contributions as per bye-laws of the Condominium.

iii) The exercise of determining liability of each member of the Condominium shall be completed by the appointed Accountants on or before 15 November 2025.

iv) The amount of liability so determined in respect of each member shall be communicated to them by the Condominium on or before 20 November 2025. The members would be at liberty to clear the amount of liability so communicated by 30 November 2025.

v) Mr. Nitin Thakkar, Senior Advocate practicing in this Court is appointed as an Observer for holding fresh elections to the Board of the Condominium.

vi) Fresh elections to the Board of Condominium shall be held under supervision of the Observer so appointed on 14 December 2025.

vii) The Observer shall permit only such members of the Condominium to contest the election and vote therein, who have cleared the entire liability communicated by the appointed Accountants by 30 November 2025 irrespective of provisions of clause 8 of the bye-laws. This arrangement shall operate only for the purpose of this election.

4. List the Interim Application for further consideration on 17 December 2025.

5. Till the next date of hearing, the current Board of Condominium shall take all necessary decisions for day to day management of the Building. The Members of the Condominium as well as the current Board can also hold discussions relating to redevelopment of the condominium building. However, no final decision shall be taken relating to appointment of a developer till the next date of hearing.

SUDARSHAN
RAJALINGAM
KATKAM

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(SANDEEP V. MARNE, J.)

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