

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**INTERIM APPLICATION (L) NO. 19961 OF 2022**  
**IN**  
**SUIT (L) NO. 19174 OF 2022**

Roshanlal K. Kothari & Ors. ..Applicants

Vs.

Mishal Construction Pvt. Ltd. & Ors. ..Defendants

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Mr. Aseem Naphade a/w Shivam Laturiya & Prachi Rungta i/b. APS Law Associates, for the Applicants.

Mr. Mehul Shah i/b. M/s. Legal Vision for Defendant No.1.

Mr. Harchit Joshi i/b. Mandar Soman for Defendant No.2.

Sheetal Metkari i/b. Sunil Sonawane for MCGM.

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**CORAM:- B. P. COLABAWALLA,J.**  
**DATE :- DECEMBER 23, 2022.**

**P. C.:**

1. The above Application is made for speaking to the minutes of order dated 13<sup>th</sup> December, 2022.

2. Mr. Naphade, the learned Advocate appearing on behalf of the Plaintiffs submitted that inadvertently the order has missed out recording that as far as future rent is concerned, the 1<sup>st</sup> Defendant shall treat the Plaintiff on par with all the other members.

3. The learned Advocate appearing on behalf of the 1<sup>st</sup> Defendant has fairly stated that this is an inadvertent mistake in the order and the same can be incorporated.

4. In these circumstances, at the end of paragraph no.4, the following shall be added:

“In addition to amount of Rs. 45,00,000/-, it is directed that for future rent, the 1<sup>st</sup> Defendant shall treat the Plaintiffs on par with all the other members of the 2<sup>nd</sup> Defendant Society”.

5. No other correction is sought. The corrections shall be carried out in the original order as well as in the copy uploaded on the server.

6. The undertakings that are to be given by the 1<sup>st</sup> Defendant through its Directors as recorded in paragraph 4 of the said order is also extended up to 15<sup>th</sup> January, 2023.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

( B. P. COLABAWALLA, J. )

For the sake of convenience, corrected order reads thus:

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

**INTERIM APPLICATION (L) NO. 19961 OF 2022**

**IN**

**SUIT (L) NO. 19174 OF 2022**

Roshanlal Kanhaiyalal Kothari & Ors. .. Applicants

**In the matter between:**

Roshanlal Kanhaiyalal Kothari & Ors. .. Plaintiffs

Vs.

Mishal Construction Pvt Ltd & Ors. .. Respondents

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Aseem Naphade a/w A.P. Stanson, Shivam Latniya, Utkarsh Sanadi, Shivam Latusiya & Prachi Rungta i/b APS Law Associates for Applicant/Plaintiff.

Laxminarayan Shukla i/b Legal Vision for Defendant No.1.

Bhupesh Dhumatkar i/b Mandar Soman for Society.

Bijal Shah, General Manager of Defendant No.1.

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**CORAM:- B. P. COLABAWALLA,J.**

**DATE :- DECEMBER 13, 2022.**

**P. C.:**

1. The above Interim Application is pressed for urgent ad-

interim reliefs in terms of prayer clauses (a) and (e) which read thus:

- (a) *That the Hon'ble Court be pleased to pass an order of temporary injunction restraining Defendant Nos. 1 and 2 from selling, transferring, alienating, encumbering and/or creating any third party right, title or interest or parting with possession of units with the area and dimensions as agreed under the Consent Terms dated 25.01.2010 read with the Permanent Alternate Accommodation Agreement dated 04.02.2010 situated in the building known as "Maitri Vijay Cooperative Housing Society Ltd" situated at CTS Nos.109, 109-1 to 20, Vadhvli village, South Salsette Taluka, Dr C.G. Road, Chembur, Mumbai 400074; i.e. 2 commercial premises with the following specifications viz. (a) area admeasuring 2336 square feet usable carpet area, (b) width of 35 feet, (c) height of 14 feet and (d) loft of 33% area;*
- (e) *That the Hon'ble Court be pleased to pass an order directing Defendant No.1 to pay to the Plaintiff's the arrears of transit rent of Rs. 81,77,295/- with interest at the rate of 18% per annum calculated from the dates as set out in the Chart at Exhibit "A-50", totally amounting to Rs. 1,10,75,249.01/- with further interest at the rate of 18% per annum from the date of filing of the suit till realization;*

2. As far as prayer clause (a) is concerned, the learned counsel appearing on behalf of Defendant No.1, has stated on instructions, that the 1<sup>st</sup> Defendant shall not dispose of Shop No.4-A, Shop No.5 and Shop No.5-A, which according to the 1<sup>st</sup> Defendant, is the entitlement of the Plaintiff. The grievance of the Plaintiff is that even these shops do not

comply with the Consent Terms entered into with the Plaintiff in as much as these shops do not have a width of 35 ft. and height of 14 ft. He therefore pressed for an injunction in relation to Shop No.1 and 6 respectively. As far as Shop No.1 and Shop No.6 are concerned, the learned counsel appearing on behalf of the 1<sup>st</sup> Defendant, has stated that these shops have already been disposed of and are not available to be allotted to the Plaintiff. This is a controversy that the Court will decide at the time of hearing and final disposal of the Interim Application.

3. In the meanwhile, as per the statement of the learned counsel appearing on behalf of the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Defendant is restrained from creating any third party right, title, interest and/or parting with possession of Shop No.4-A, Shop No.5 and Shop No.5-A respectively.

4. As far as prayer clause (e) is concerned, the learned advocate appearing on behalf of Defendant No.1 has submitted that the outstanding is not Rs.81,77,295 (as claimed by the Plaintiff) but a sum of approximately Rs.45 Lakhs. He submitted that without prejudice to the rights and contentions of the 1<sup>st</sup> Defendant, they shall pay an amount of Rs.45 Lakhs to the Plaintiff within a period of 12 weeks from today.

The said statement is accepted as an undertaking given to this Court. It has also been explained to the Director of the 1<sup>st</sup> Defendant who is present in Court that breach of this undertaking shall have serious and dire consequences including a jail term. A separate written undertaking shall be executed by the Directors of the 1<sup>st</sup> Defendant, undertaking to pay the sum of Rs.45 Lakhs to the Plaintiff within a period of 12 weeks from today. This written undertaking shall be filed in this Court within a period of 2 weeks from today. **In addition to amount of Rs. 45,00,000/-, it is directed that for future rent, the 1<sup>st</sup> Defendant shall treat the Plaintiffs on par with all the other members of the 2<sup>nd</sup> Defendant Society**

5. Additionally, the learned advocate has stated that until the aforesaid payment of Rs.45 Lakhs is made to the Plaintiff [as per the undertaking given above], the 1<sup>st</sup> Defendant shall not create any third party rights in relation to Flat No.701 which is yet to be constructed in Wing-B of the Project. The said statement is accepted as an undertaking given to this Court. It is made clear that by merely giving this security it does not mean that the 1<sup>st</sup> Defendant is released of its undertaking to pay the amount of Rs.45 Lakhs within a period of 12 weeks from today.

6. The Defendants shall file their affidavit-in-reply to the above Interim Application within a period of 4 weeks from today and

serve a copy of the same on the advocates for the Plaintiff. The 1<sup>st</sup> Defendant, shall also disclose the transactions entered into in relation to Shop No.1 and Shop No.6 respectively.

7. Place the above Interim Application for hearing and final disposal as per its turn.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**( B. P. COLABAWALLA, J. )**