

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 6994/2023

(Arising out of impugned final judgment and order dated 06-02-2023 in CAL No. 3302/2023 passed by the High Court Of Judicature At Bombay)

WIGBERT STANLEY RODRICKS & ANR.

Petitioner(s)

VERSUS

OM VITHAL CO-OPERATIVE HOUSING SOCIETY LIMITED & ORS.Respondent(s)

(FOR ADMISSION and I.R. and IA No.70380/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 01-05-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Dama Seshadri Naidu, Sr. Adv.
Mr. Vivek Gupta, AOR
Mr. Rakesh Agarwal, Adv.
Mr. Mrinmay Bhattmewara, Adv.
Mrs. Samprati Bhattmewara, Adv.
Mr. Ankit Verma, Adv.
Mr. Rajvir Singh Bhati, Adv.

For Respondent(s) Mr. Sunil Fernandes, Adv.
Mr. Tushar Gujjar, Adv.
Mr. Divyansh Tiwari, Adv.
Mr. Deepak Singh, Adv.
Ms. Diksha Dadu, Adv.
Ms. Nupur Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

We have heard Mr. Dama Seshadri Naidu, learned senior counsel appearing for the petitioner. Mr. Sunil Fernandes, learned counsel is appearing for respondent no.1, who has entered appearance by filing caveat.

It is not in a dispute that although the petitioner has paid substantial part of the consideration for one commercial unit but this is in a half constructed building and therefore occupancy certificate for this incomplete building has not been issued. Thus the petitioner's possession is unauthorised and in violation of Section 353-A of the Mumbai Municipal Corporation Act, 1888.

In view of above, we see no reason to interfere with the impugned order of the Division Bench which has affirmed the judgment of the learned Single Judge of the High Court. The special leave petition is accordingly dismissed.

It is however noticed that the petitioner has been given the liberty to file a separate action under the sale agreement that he has entered with respondent no.2-Developer. We, therefore, make it clear that the dismissal of this special leave petition will not foreclose the option of the petitioner to explore such remedy which may be available to them, in accordance with law.

Pending application, if any, shall also stand closed.

(MAHABIR SINGH)
ASST. REGISTRAR-CUM-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR