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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 1163 OF 2014

M/s.Talware Builders Pvt.Ltd. and others .. Petitioners

Vs.

M/s.Niwas Properties Pvt.Ltd. and others .. Respondents

Mr.Sham Walve, Advocate for the Petitioners.

Mr.Shriram S.Kulkarni, Advocate for the Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 01st JULY, 2015

P.C. :

. Heard Mr.Sham Walve, learned Counsel for the petitioners and Mr.Shriram.S.Kulkarni, learned Counsel for respondent No.1 at length. Mr.Walve orally seeks leave to delete respondents No. 3 & 4. Leave to delete respondents No. 3 & 4 is granted. Amendment shall be carried out forthwith. Rule. Mr.Kulkarni waives service. At the request and by consent of the parties, Civil Revision Application is taken up for final hearing.

2. By this petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No. 1, 2 & 5 have challenged the judgment and order dated 02/08/2013 passed by the learned 4th Joint Civil Judge, Senior Division, Nahsik below Exhibit 36 in Special Civil Suit No. 243 of 2010. By that order, the

learned trial Judge rejected the application taken out by the petitioners under Order 7 Rule 11(a) of C.P.C. for rejecting the plaint on the ground that suit does not disclose cause of action.

3. In support of this Petition, Mr.Walve submitted that petitioners No. 1 & 3 herein have instituted Special Civil Suit No. 280 of 2008 in the Court of Civil Judge, Senior Division, Nashik for specific performance of agreement dated 29/03/1992. He submitted that defendant No.3- Sagar Rameshwar Modi and defendant No. 4- Satish Banwarilal Gadodia and defendant No.5- Govind Bhikarilal Agrawal and defendant No. 9- Nivas Properties India Ltd filed application under Order 1 Rule 10 for deleting them as party defendants. By judgment and order dated 17/10/2008, the learned trial Judge allowed the applications at Exhibits 40 & 42 made by defendants No. 3 to 5 and 9 and deleted the names of defendants No. 3 to 5 & 9. Aggrieved by that decision, petitioners instituted Writ Petition No. 7413 of 2008 in this Court. After hearing both sides, Petition was allowed on 05/12/2008 and the trial Court's order deleting defendants No. 3 to 5 & 9 was quashed and set aside.

4. Mr.Walve submitted that the net result is that defendants No. 3 to 5 & 9 continue to be defendants No. 3 to 5 & 9 in the Suit instituted by the petitioners No. 1 & 3. He submitted that the petitioners have also registered lis pendents on 04/06/2008 and 27/02/2009. Accordingly, public notices were issued on 24/03/2009

cautioning the public at large and intimating them about pendency of the Suit as also registration of the lis pendents. He submitted that respondents instituted Special Civil Suit No. 243 of 2010 claiming compensation of Rs.5 Crores on account of defamatory statements contained in the public notices issued by the petitioners.

5. Mr.Walve submitted that during the pendency of the Suit instituted by the respondents, petitioners took out application under Order 7 Rule 11(a) of C.P.C. for rejecting the plaint as it does not disclose cause of action. By the impugned order, the learned trial Judge has rejected the application.

6. In support of this Petition, Mr.Walve submitted that from paragraphs 2 to 6, the learned trial Judge has recorded the submissions advanced on behalf of the parties as also noted the judgments relied by them in support of their respective contentions. The learned trial Judge, however, did not deal with any of the submissions. Mr.Walve submitted that basically the public notices were issued by the petitioners in larger public interest cautioning them about pendency of the Suit as also registration of the lis pendents. The learned trial Judge has not considered this aspect.

7. During the course of hearing of this Petition, on the previous date i.e. yesterday, suggestion was given to Mr.Kulkarni to consider as to whether the impugned order could be set aside by consent so as to restore application made by the petitioners for

deciding the same afresh after considering all the submissions of the parties.

8. Mr.Kulkarni, upon taking telephonic instructions from the respondents has agreed for setting aside the impugned order by consent and deciding it afresh.

9. In view thereof, by consent of the parties, Petition is disposed of in the following terms.

I) The impugned order dated 02/08/2013 passed by the learned 4th Joint Civil Judge, Senior Division, Nahsik below Exhibit 36 in Special Civil Suit No. 243 of 2010 is set aside.

II) The application at Exhibit 36 is restored to the file of trial Court. The learned trial Judge will consider all the submissions and record the reasons while disposing of the application.

10. It is expressly made clear that I have not examined merits of the case and all the contentions of the parties are expressly kept open. The learned trial Judge will decide application uninfluenced by the observations made herein. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)