

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3579 OF 2015**

M/s. Saikrupa Organisers Phase-II

..Petitioner

Vs.

Bhagwan Manglya Keni & Ors.

..Respondents

Mr. K. K. Malpathak a/w Mr. Sandesh Deshpande for the Petitioner

Mr. Dilip Bobade for the Respondent No.1

Mr. S. D. Patil for the Respondent Nos.2 to 5, 10 to 12 and 14 to 19

**CORAM : R. M. SAVANT, J.
DATE : 17th OCTOBER, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the Order dated 20-1-2015 passed by the Learned Civil Judge Senior Division Thane, by which order the application Exhibit 61 filed by the Petitioner / Plaintiff came to be rejected.

2 The Suit in question being Special Civil Suit No.655 of 2013 has been filed for specific performance of the agreement dated 29-7-2002 which was for development of the plots of land in respect of which the Plaintiff had development rights. In the said Suit an objection was raised by the Defendant

Nos.2 to 19 i.e. the flat purchasers who are the Respondent Nos.2 to 19 in the above Petition, as also the Defendant No.1 who is the Respondent No.1 invoking Section 9A and raising the bar of limitation in so far as the Suit is concerned by filing the applications Exhibits 24 and 31. The Trial Court has accordingly framed an issue of limitation which reads thus “Whether the Suit is within limitation”, by order dated 20-1-2015. It is pending the adjudication of the said preliminary issue that an application came to be filed under Section 9A(2) for interim reliefs. The said application has been rejected by the impugned order and suffice it would be to state that the application is rejected on the ground that the apprehension that the Defendant Nos.2 to 19 would sell the flats in question, is misfounded and that in the application Exhibit 5 filed by the Plaintiff no reliefs have been granted.

3 With the assistance of the Learned Counsel for the parties, I have gone through the relevant documents that is the agreement dated 29-7-2002 and the Power of Attorney executed by the Petitioner / Plaintiff in favour of the Respondent No.1. In my view, since the issue of limitation framed under Section 9A is pending, to avoid further complications it would be just and proper to direct the Defendant Nos.2 to 19 to maintain status-quo in respect of the flats in question. Hence the following directions :

(i) The impugned order dated 20-1-2015 is quashed and set aside and the

Defendant Nos.2 to 9 are directed to maintain status-quo pending consideration of the said preliminary issue framed under Section 9A in respect of the flats in question.

(ii) The preliminary issue that has been framed by order dated 20-1-2015 passed by the Learned Civil Judge Senior Division, Thane, be adjudicated by the concerned Learned Judge of the Trial Court latest by 31-12-2015.

(iii) As indicated above, the order of status-quo would operate till the decision is rendered on the said preliminary issue. If the Suit is held to be in limitation, then it would be open for the Plaintiff to prosecute the application Exhibit 5 which is already filed and is pending. The said application would then be considered on its own merits and in accordance with law uninfluenced by the fact that an order of status-quo was granted in the instant Petition.

(iv) The parties to appear before the Trial Court on 21-10-2015. The Trial Court is directed to adjudicate the said preliminary issue in terms of the time frame fixed by this court and not grant unnecessary adjournments to the parties.

(v) The Learned Counsel on either side make a statement that their clients would co-operate in the early disposal of the said preliminary issue in terms of

the time frame fixed by this Court.

(vi) Needless to state that the preliminary issue would be decided on its own merits and in accordance with law.

4 With the aforesaid directions the Writ Petition is disposed of

[R.M.SAVANT, J]