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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 651 OF 2014
IN
SECOND APPEAL NO. 256 OF 2014

Chuharlal Chetandas Jaisinghani .. Applicant

Vs.

1. Kanayalal Chetandas Jaisinghani
2. Maharashtra State Electricity Board .. Respondents

Mr.A.S.Khandeparkar a/w Mr.S.C.Chandratre i/b Khandeparkar &
Associates, Advocate for the Applicant.
Mr.Surel S.Shah, Advocate for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 20th APRIL, 2015

P.C. :

. Heard Mr.A.S.Khandeparkar, learned Counsel for the
applicant and Mr.Surel S.Shah, learned Counsel for respondent No.1
at length.

2. Mr.Khandeparkar states that respondent No.2-
Maharashtra State Electricity Board is a formal party and notice may
be dispensed with qua respondent No.2. In view thereof, on the
motion made by Mr.Khandeparkar, notice on respondent No.2 is
dispensed with. Rule. Mr.Shah waives service for respondent No.1.
At the request and by consent of the parties, Rule is made returnable
forthwith and the application is taken up for final hearing.

3. By this application, the original plaintiff has prayed for stay of judgment and decree dated 31/12/2013 passed by the learned District Judge, Pune in Civil Appeal No. 455 of 2008. The original plaintiff has also sought injunction restraining defendant No.1 from dealing with the suit property in whatsoever manner during the pendency of the appeal.

4. In the suit, the original plaintiff has sought declaration that he is the owner of Flat No.2 as more particularly described in paragraph 1B of the plaint. The plaintiff has also sought further direction against defendant No.1 to execute conveyance deed in his favour as per agreement to sale dated 12/05/1983 with respect to 50% plot described in para 1(A) i.e. Plot area of 2100 sq.ft.

5. Mr.Shah, upon taking instructions from Mr.Navin Jaisinghani – son of defendant No.1, states that defendant No.1 has not utilized the F.S.I. of area of 2100 sq.ft as claimed by plaintiff as per the clause (b) in the sanctioned plan dated 25/08/2014. Defendant No.1 will carry out construction over flat No.1 which is constructed by defendant No.1 as per the sanctioned plan dated 25/08/2014 without utilizing FSI of 2100 sq.ft as claimed by the plaintiff as per prayer clause (b) of the plaint. The statements made by respondent on instructions are recorded.

6. Perusal of the District Court's judgment shows that the learned District Judge has dismissed the claim of the plaintiff for

specific performance of contract. In view thereof, there is no question of granting stay to the District Court's judgment.

7. In view thereof, Civil Application is disposed of in the following terms.

- I) Defendant No.1 is permitted to put up construction over flat No. 1 as per the sanctioned plan dated 25/08/2014 without utilizing FSI of 2100 sq.ft area covered by the prayer clause (b) of the plaint.
- II) The sanctioned plan dated 25/08/2014 as also commencement certificate are taken on record and are marked 'X collectively' for identification and shall form part of this order.

(R. G. KETKAR, J.)