

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.1055 OF 2014

Shree Raj Developers	]
A registered Partnership Firm,	]
Having its office at : 118, Agarwal	]
Trade Centre, Land Survey No.62,	]
Sector K 11, C.B.D., Belapur,	]
Navi Mumbai, Through Partners	]
	]
1] Shri Hansraj Manji Singhani	]
Age/57 years, Occupation : Business	]
	]
2] Shri Balwant Chhaganlal Patel	]
Age/45 years, Occupation : Business	]
	]
3] Shri Ratnashi Manji Singhani	]
Age/50 years, Occupation : Business	]
	]
4] Shri Purushottam Manji Singhani	]
Age/52 years, Occupation : Business	]
	]
5] Shri Raju Hansraj Singhani	]
Age/27 years, Occupation : Business	]
	]..... Applicants.

Versus

1] Shri Appa Bapu Patil	]
Age/65 yrs. Occupation : Business	]
	]
2] Shri Sadashiv Ganpat Patil	]
Age/50 yrs. Occupation : Business	]
	]
3] Shri Vinayak Ganpat Patil	]
Age/48 yrs. Occupation : Business	]
	]
4] Smt. Kusum Kashinath Patil	]
Age/30 yrs. Occupation : Business	]
	]
5] Smt. Neera Laxman Phadke	]
Age/35 yrs. Occupation : Business	]

- 6] Smt. Bebibai Namdeo Fadke]
Age/34 yrs. Occupation : Business]
]
- 7] Smt.Dhondibai Ganpat Patil]
Age/75 yrs. Occupation : Business]
]
- 8] Shri Keshav Bapu Patil]
Age/65 yrs. Occupation : Business]
]
- 9] Smt. Raghubai Savlaram Patil]
Age/62 yrs. Occupation : Business]
]
- 10] Smt. Chandra Lahu Mhaskar]
Age/40 yrs. Occupation : Business]
]
- 11] Smt. Mandabai Lahu Mhaskar]
Age/38 yrs. Occupation : Business]
]
- 12] Smt. Chhabibai Jagan Palekar]
Age/67 yrs. Occupation : Business]
]
- Nos.1 to 12 R/o. Temborde, Taluka/
Panvel, District : Raigad.]
]
- 13] M/s. Caliber Engineers & Developers]
Proprietor Shri Sanjay S Bhosale]
Age/42 years, Occupation : Business]
R/0. 303, A-wing, Caliber Apartment]
Ganpat Naka Povle Road, Near Shahabaj]
Village, Belapur, Navi Mumbai.]
]
- 14] Manager/Supervisor, : City Service]
CIDCO, 1st Floor, Land Division,]
CIDCO Bhavan, C.B.D. Belapur]
Navi Mumbai.]
]
- 15] M/s. Krishna Enterprises]
Partnership Firm, Throure]
Shri Shailesh Ratibai Patel]
Age/Adult, Occupation : Business]
Office address : 122/123, Gromor]
Tower, Flat No.5, Sector No.2]
Near Siemens Building, Khargar]
Navi Mumbai – 410210]..... Respondents.

**ALONG WITH
WRIT PETITION NO.10157 OF 2014**

M/s. Krishna Enterprises	]	
A registered Partnership Firm,	]	
Through its Partner	]	
Shri Shailesh Ratibhai Patel	]	
Having address at 122/123, Growmore	]	
Tower, Plot No.5, Sector, 2, Neral Seamens	]	 Petitioner.
Building, Kharghar, Navi Mumbai-410 201	]	(Orig. Defendant No.15)

versus

1]	Appa Bapu Patil (since deceased)	]	
	Through his heirs and legal	]	
	representatives	]	
1A]	Shri Ananta Appa Patil	]	
	Age : 55 years, Occ : Agri.	]	
		]	
1B]	Shri Raghunath Appa Patil	]	
	Age 52 years, Occ : Agri.	]	
		]	
1C]	Shri Mayaji Appa Patil	]	
	Age 42 years, Occ : Agri.	]	
		]	
1D]	Smt. Anuradha Laxman Phadke	]	
	Age 45 years, Occ : Agri.	]	
		]	
	Nos. 1A to 1D, r/o. Ohad, Taluka	]	
	Panvel, District Raigad.	]	
		]	
2]	Shri Sadashiv Ganpat Patil	]	
	Age/50 yrs. Occ : Agri	]	
		]	
3]	Shri Vinayak Ganpat Patil	]	
	Age/48 yrs. Occ : Agri	]	
		]	
4]	Smt. Kusum Kashinath Patil	]	
	Age/30 yrs. Occ : Agri	]	
		]	
5]	Smt.Nera Laxman Phadke	]	
	Age/35 yrs. Occ : Agri	]	

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| 6] | Smt. Bebibai Namdeo Phadke |] |
| | Age/34 yrs. Occ : Agri |] |
| | |] |
| 7] | Smt.Dhondibai Ganpat Patil |] |
| | Age/75 yrs. Occ : Agri |] |
| | |] |
| 8] | Shri Keshav Bapu Patil |] |
| | Age/65 yrs. Occ : Agri |] |
| | |] |
| 9] | Smt. Raghubai Savlaram Patil |] |
| | Age/62 yrs. Occ : Agri |] |
| | |] |
| 10] | Smt. Chandabai Lahu Mhaskar |] |
| | Age/40 yrs. Occ : Agri |] |
| | |] |
| 11] | Smt. Mandabai Lahu Mhaskar |] |
| | Age/38 yrs. Occ : Agri |] |
| | |] |
| 12] | Smt. Chhabibai Jagan Palekar |] |
| | Age/67 yrs. Occ : Agri |] |
| | |] |
| | Nos.2 to 12 having address at |] |
| | Tembhode, Taluka Panvel, |] |
| | District : Raigad. |] |
| | |] |
| 13] | M/s. Caliber Engineers and |] |
| | Developers |] |
| | Through its Proprietor |] |
| | Dr. Sanjay S Bhosale |] |
| | Age : 42 years, Occupation : Business |] |
| | Having address at 303, A-wing, |] |
| | Caliber Apartment Ganpat Naka, |] |
| | Powale Road, Near Shahabaj Village, |] |
| | Belapur, Navi Mumbai. |] |
| | |] |
| 14] | The Manager Town Service CIDCO Ltd. |] |
| | 1 st Floor, Land Section, CBD Belapur |] |
| | Navi Mumbai. |] |
| | |] |
| 15 | Shree Raj Developers |] |
| | A registered Partnership Firm, |] |
| | Having address at Plot No.62, |] |
| | Agarwal Trade Centre, Sector 11, |] |
| | C.B.D., Belapur, Navi Mumbai |] |

Through its Partners	]
	]
1] Shri Hansraj Manji Singhani	]..... Respondents
2] Shri Balwant Chhaganlal Patel	](Respondent Nos.1 to 4/
3] Shri Ratanshi Manji Singhani	]Org.Defendant Nos.1 to 14
4] Shri Purushottam Manji Singhani	]Respondent No.15/Orig.
5] Shri Raju Hansraj Singhani	]Plaintiff).

Appearances in Civil Revision Application No.1055 of 2014 :

Mr. P S Dani, Senior Advocate, with Mr. Pratap P Mandlik for the Applicants.

Mr. V A Thorat, Senior Advocate with Mr. Bipin J Joshi and Mr. Prayag Joshi for the Respondent No.13.

Mr. Rohit P Sakhadeo for the Respondent No.14.

Appearances in Writ Petition No.10157 of 2014 :-

Mr. Y. S. Jahagirdar, Senior Advocate, with Mr. S M Sabrad for the Petitioners.

Mr. V A Thorat, Senior Advocate with Mr. Bipin J Joshi and Mr. Prayag Joshi for the Respondent No.13.

CORAM : R. M. SAVANT, J.

DATE : 5th February 2015

ORAL JUDGMENT

1 The above Civil Revision Application is Admitted, and considering the challenge raised therein, with the consent of the learned counsel for the parties taken up for final hearing forthwith. The revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure is invoked against the order dated 9/10/2014 passed by the learned Civil Judge, Senior Division, Panvel by which order the Applications (Exhibits 186 and 191) came to be allowed and the Application (Exhibit 180) came to be rejected.

2 The above Writ Petition is companion to the above Civil Revision Application. Hence Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard. The above Writ Petition takes exception to the order dated 9/10/2014 passed by the learned Civil Judge, Senior Division, Panvel in so far as it rejects the Application (Exhibit 180).

3 In so far as the above Civil Revision Application is concerned, the same has been filed by the original Plaintiff which is a partnership firm involved in the business of development of properties. In so far as the above Writ Petition No.10157 of 2014 is concerned, the same has been filed by the original Defendant No.15 which is also a partnership firm and also involved in the development of properties. The order passed on the Application (Exhibit 180) is challenged by the Defendant No.15 by way of the above Writ Petition.

4 In so far as the Civil Revision Application is concerned, the Respondent Nos.1 to 7 and Respondent Nos.8 to 12 herein are the original Defendant Nos.1 to 7 and original Defendant Nos.8 to 12. The Respondent No.13 herein is the original Defendant No.13. The Respondent No.14 herein is the original Defendant No.14, and the Respondent No.15 herein is the original Defendant No.15.

5 The suit in question being Special Civil Suit No.11 of 2008 has

been filed by the Plaintiff for specific performance of the Development Agreement dated 11/6/2003. By the said Agreement dated 11/6/2003 the Defendant Nos.1 to 12 who were the allottees of a plot of land from the Defendant No.14 CIDCO under the 12.5% scheme had agreed to transfer the said plot in favour of the Plaintiff for which the total consideration of 21,75,000/- was allegedly paid by the Plaintiff to the said Defendant Nos.1 to 12. It is the case of the Plaintiff that inspite of the said Agreement and payment of the amount of consideration to the extent of 90%, the Defendant Nos.1 to 12 entered into an Agreement dated 6/2/2009 with the Defendant No.13 and alienated the said plot to the Defendant No.13. The Defendant No.13 in turn by an Agreement dated 16/2/2009 transferred the said plot to the Defendant No.15. In so far as the Defendant No.13 and the Defendant No.15 are concerned, after the transfer of the plot to them, there were tripartite agreements entered into between the said Defendants, the land owners and the CIDCO, pursuant to which the said transfers to the said Defendants were formalized.

6 In the said suit, the Plaintiff filed an Application for temporary injunction which Application came to be rejected by the Trial Court. The Plaintiff aggrieved by the said rejection, carried the matter by way of an Appeal being Appeal from Order No.683 of 2008 to this Court. The said Appeal from Order came to be dismissed by this Court. It is after the dismissal of the

temporary injunction application that the Plaintiff amended the suit so as to incorporate prayer clause 4(A) by which prayer the Plaintiff sought compensation of Rs.Three Crores from the Defendant No.15 who is the last alienee of the plot in question.

7 In the context of the challenge involved in the present Civil Revision Application and the Writ Petition, it would be opposite to refer to the written statement filed by the Defendant No.13. In paragraph 5 of its written statement, the Defendant No.13 has unequivocally and unambiguously stated that pursuant to the Agreement entered into between the Defendant No.13 and the Defendant No.15, all rights in respect of the plot in question have been transferred in favour of the Defendant No.15. It has further been stated that in fact the Plaintiff is liable to pay damages to the Defendant No.15. The Defendant No.13 further stated that the rights, which have accrued to the Defendant No.13 vide Agreement dated 25/03/2000 entered into between the land owners i.e. the Defendant Nos.1 to 12 and the Defendant No.13, have been transferred to the Defendant No.15. The Defendant No.13 has therefore accepted the position that it has divested itself of all its rights in respect of the plot in question by transferring to the Defendant No.15 and that is the Defendant No.15 which is now concerned with the said plot of land.

8 In the context of the present Civil Revision Application and the

Writ Petition, it would also be opposite to refer to the written statement of the Defendant No.15. The Defendant No.15 has adverted to the Agreement between it and the Defendant No.13 and has also referred to the steps it has taken pursuant to the said Agreement which was executed by the Defendant No.13 in its favour.

9 It is during the pendency of the suit that the Plaintiff and the Defendant No.15 thought of resolving the dispute between them, since on account of the original owners divesting themselves of their rights in favour of the Defendant No.13 and thereafter the Defendant No.13 divesting itself of its rights in favour of the Defendant No.15, the dispute solely remained between the Plaintiff and the Defendant No.15. The Plaintiff and the Defendant No.15 therefore tried to resolve the dispute between them and for the said purpose it appears that the partners of the Plaintiff and the Defendant No.15 had meetings pursuant to which a settlement was arrived at and the terms of the settlement were to the effect that the Plaintiff accepts the rights created in favour of the Defendant No.15, and the Defendant No.15 in terms of compensating the Plaintiff decided to allot 7 flats in the scheme which it was implementing. In view of the said settlement terms which were drawn up, the Plaintiff filed an Application (Exhibit 180) for recording compromise in the suit, and also filed an Application (Exhibit 181) for deleting the Defendant Nos.1 to 14 on the ground that the Plaintiff did not have any claim against the

said Defendants.

10 In so far as the said Application (Exhibit 181) is concerned, the Defendant Nos.1 to 12 filed their reply. In the said reply they have accepted the fact that they have transferred the plot in question to the Defendant No.13 who in turn has transferred the said plot to the Defendant No.15. They further averred that the Defendant No.15 is constructing as per plan approved and permission granted by the Defendant No.14 – CIDCO, and inspite of the same, the Plaintiff and the Defendant No.15 in collusion have arrived at a compromise by which the Defendant No.15 had agreed to provide 7 flats to the Plaintiff when there was no need and necessity to do so. It is pertinent to note that the reply filed on behalf of the Defendant Nos.1 to 14 is by their Power of Attorney one Sanjay S Bhosale, who is the proprietor of the Defendant No.13.

11 In so far as the Defendant No.13 is concerned, it has filed its reply-cum-application to the said Application (Exhibit 181). The Defendant No.13 questioned the settlement arrived at between the Plaintiff and the Defendant No.15 and prayed that it should be joined as a Plaintiff to the suit.

12 The Trial Court considered the said Applications (Exhibits 180, 181, 186 and 191). As indicated above the Applications (Exhibit 180 and Exhibit 181) were filed by the Plaintiff. In so far far as the Applications

(Exhibit 186 and Exhibit 191) are concerned, they have been filed by the Defendant Nos.1 to 12, and the Defendant No.13 respectively. The Trial Court, allowed the Application (Exhibit 186) thereby refusing to record the compromise, and also allowed the Application (Exhibit 191) for transposing the Defendant No.13 as the Plaintiff. The Trial Court rejected the Application (Exhibit 180) for withdrawal of the suit against the Defendant Nos.1 to 14. The gist of the reasoning of the Trial Court is crystallized in paragraph 11 of the impugned order. The Trial Court has observed that after the rejection of the Application for temporary injunction, the suit remained only for claiming compensation in so far as the Plaintiff is concerned, and since the Plaintiff would not be in a position to prove its claim for compensation, there was no necessity for the Defendant No.15 to arrive at a compromise and agree to allot 7 flats to the Plaintiff. The Trial Court has further observed that since the Defendant No.13 has filed the Application (Exhibit 191) for being joined as the Plaintiff in the suit, there is an obstacle or impediment in accepting the consent terms and hence it would not be appropriate for it to accept the consent terms, and has accordingly rejected the said Application (Exhibit 180) filed by the Plaintiff by the impugned order dated 9/10/2014.

13 Heard the learned counsel for the parties. The learned Senior Counsel appearing on behalf of the Applicant Shri P S Dani would re-iterate the case of the Applicant i.e. the Plaintiff before the Trial Court. The learned

Senior Counsel would contend that the Trial Court has rejected the said Applications (Exhibit 180) on the grounds which are untenable in so far as Order XXXIII of the Code of Civil Procedure is concerned. The learned Senior Counsel would contend that the Trial Court could have only refused to record the compromise only if it found that the compromise was illegal or against the public policy. The learned Senior Counsel would therefore contend that the reasons mentioned by the Trial Court apart from being untenable are not germane for consideration of an Application for recording of a compromise.

14 The learned Senior Counsel Shri Y S Jahagirdar appearing on behalf of the Defendant No.15, i.e. the Petitioner in the above Writ Petition, would support the contentions urged on behalf of the Plaintiff i.e. the Applicant in the Civil Revision Application, by the learned Senior Counsel Shri P S Dani. However, in addition, he would contend that the intention or motive in filing the Applications (Exhibits 186 and 191) is not far to seek since the said Applications have been filed by the Defendant Nos.1 to 12 through their Power of Attorney who is the proprietor of the Defendant No.13.

15 Per contra, the learned counsel appearing on behalf of the Defendant No.13 made an attempt to justify the impugned order, but could not do so with any deal of conviction.

16 Having heard the learned counsel for the parties, I have considered the rival contentions. The question which is posed is, whether the Plaintiff is entitled to enter into a compromise and whether the Trial Court was required to record the said compromise, as also allow the application for deletion of the Defendant Nos.1 to 14. To answer to the said question, the facts which have already been adverted to herein above would have to be re-visited again. As indicated above, the Defendant No.13 has unequivocally and unambiguously stated in its written statement that whatever rights the Defendant No.13 had in respect of the plot in question, the same have been transferred to the Defendant No.15. In fact in the written statement the Defendant No.13 has in terms stated that the Defendant No.15 has after obtaining the building permission from the Defendant No.14 – CIDCO commenced the construction work and therefore the Plaintiff cannot have any claim against the Defendant No.15. The stand of the Defendant No.13 in its written statement is therefore the defining aspect in so far as the present matter is concerned, as it is the Defendant No.13 who seems to be having a motive behind opposing the deletion of the Defendant Nos.1 to 14 as also recording of the compromise in the suit. It is well settled that a Court is required to record compromise if the parties, out of their own free will and volition, have arrived at the same, unless the Court comes to a conclusion that the said compromise is illegal or against the public policy as contained in Section 23 of the Contract Act. In the instant case, the Trial Court has not

recorded any finding that the compromise arrived at between the Plaintiff and the Defendant No.15 is illegal or hit by any clause of Section 23 of the Contract Act, but on the specious ground that the Defendant No.13 has made an application for being transposed as the Plaintiff has rejected the said application for recording of compromise and for deletion of the Defendant Nos.,1 to 14. Another aspect to be noted is that the Trial Court has observed that since the Plaintiff would not be able to prove its case as regards compensation from the Defendant No.15, there was no necessity for the Defendant No.15 to enter into the compromise with the Plaintiff and allot 7 flats to the Plaintiff. How such a conclusion could have been arrived at by the Trial Court therefore begs an answer. The Trial Court has further observed that the suit after rejection of the Application for temporary injunction, the Plaintiff's suit only remained for compensation from the Defendant No.15, such an observation could not have been made by the Trial Court in the teeth of the fact that the suit was filed for specific performance. In my view, therefore, the Trial Court has rejected the said Application (Exhibits 180) by taking into consideration facts which are not germane as also on a wrong premise resulting in the Application being rejected for reasons which are totally untenable. In so far as the Application (Exhibit 181) is concerned, the Trial Court has not even decided the same.

17 It is also required to be noted that the Defendant No.13 has sought

to oppose the Application on the pretext that the compromise would result in the Defendant No.15 making a claim against the Defendant No.13. In my view, the said stand of the Defendant No.13 was a totally dishonest stand considering the stand taken by it in its written statement wherein it has stated in no uncertain terms that it has divested itself of its rights in respect of the plot in question in favour of the Defendant No.15. The Trial Court has also, without considering as to whether the Plaintiff would have a right to carry forward the cause of action of a suit filed for specific performance, allowed the Applications (Exhibit 186 and 191). Hence without considering the said aspect, the Trial Court has rejected the Application (Exhibit 180) which, as indicated above, is totally untenable for the reasons adverted to herein above. In my view, therefore, the impugned order dated 9/10/2014 in so far as it allows the Applications (Exhibits 186 and 191) and rejects the Application (Exhibit 180) is required to be quashed and set aside and is accordingly quashed and set aside. The Application (Exhibit 180) would accordingly stand allowed. The Trial Court is directed to record the compromise between the Plaintiff and the Defendant No.15. As a result, the Defendant Nos.1 to 14 would stand deleted from the suit. Though the Trial Court has not decided the Application (Exhibit 180) Since Order XXIII Rule 1 of the Code of Civil Procedure provides that the Plaintiff can abandon his claim at any point of time, and since in the instant case the Plaintiff wants to delete the Defendant Nos.1 to 12 on the ground that it has no claim against them, the said Application (Exhibit 181) would

therefore also have to be allowed and is accordingly allowed. The parties would appear before the Trial Court on 16/02/2015. The Trial Court would dispose of the suit in terms of the directions as contained in the instant order. The above Civil Revision Application is allowed to the aforesaid extent.

18 In view of the order passed in the above Civil Revision Application whereby the Application (Exhibit 180) is allowed, the above Writ Petition challenging the impugned order in so far as the Application (Exhibit 180) is concerned to accordingly stand allowed, in view of the directions issued in the order passed in the above Civil Revision Application, there is no necessity to issue separate directions in so far as the above Writ Petition is concerned. Rule in the above Writ Petition is accordingly made absolute in terms of the said directions.

[R.M.SAVANT, J]