

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.1152 OF 2015  
WITH  
CIVIL APPLICATION NO.1441 OF 2015**

M/s. MAN Global Limited ... Appellant  
vs.  
M/s. S.C. Automobiles ... Respondent

Mr. Dinyar Madon, Senior Advocate a/w. Mr. B. Dave, Mr. Sameer Pandit and Mr. Abhijeet Sadikale i/b. Wadia Ghandy & Co., for the Appellant/Applicant.

Mr. J. Reis, Senior Advocate a/w. Mr. Chirag Balsara i/b. Mr. A. A. Joshi, for the Respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **19<sup>th</sup> NOVEMBER, 2015**

**P.C.:**

. In this Appeal from Order, the order dated 19<sup>th</sup> September, 2015 passed by the 5<sup>th</sup> Joint Civil Judge, S.D., Thane is challenged. The Plaintiffs have filed this Appeal as the application filed by the Defendants i.e. Respondents in the present Appeal under Order 39, Rule 1 and 2 of the Code of Civil Procedure was allowed. So also the application filed by the Plaintiffs against the Defendants i.e.

Respondents is allowed. Thus, the outcome of the order is that both the parties are restrained from creating third party interest or encumbrance of any nature over the suit property and to maintain the status-quo. In the order of status-quo, the construction of the building which was being carried out by the Plaintiffs pursuant to the Rental Housing Scheme has been stopped.

2. The Plaintiffs have filed a suit for specific performance of the development agreement dated 27<sup>th</sup> July, 2012. There are three lands which are described in Annexure I II and III. The land in Annexure II was initially owned by the Respondents/owner by a registered sale deed. The land in Annexure II is sold to the Plaintiffs. The lands described in Annexure I and III are also the lands owned by the Respondents i.e. the original Defendants. The land described in Annexure-III is the small portion of the land admeasuring 4652 Sq.Mtrs and the Defendants by way of a registered conveyance have transferred this land to the Plaintiffs in anticipation that the said portion of the land would be transferred to MMRDA for the purpose of sanctioning the housing scheme which is known as the “Rental Housing Scheme”. The Plaintiffs are the owners of the land described

in Annexure I and the parties have entered into a development agreement of this land on 27<sup>th</sup> July, 2012. As per the agreement, the Plaintiffs who are the developers are supposed to construct residential buildings on the land in Annexure I and out of the said constructed area 44.5 % of the FSI I is to be given to the Respondents/ land owners and the remaining FSI was to be enjoyed by the Plaintiffs as they are going to develop the land and construct the buildings.

3. In the development agreement, there is a clause that the Plaintiffs will submit a plan for the amalgamation of both the plots i.e. lands described in Annexure I and II and after getting it amalgamated from MMRDA, the remaining plots can be developed jointly and on amalgamation of both the plots the rental housing scheme can be constructed.

4. The learned Judge has passed the order of status-quo. The Plaintiffs came out with the case that the Rental Housing Scheme on land described in Annexure II is already approved by a plan in the year 2010 by the Corporation and the Plaintiffs have already constructed four buildings on the said land as per the approved plan.

Today four buildings are constructed and other remaining are under construction.

5. The learned senior counsel for the Plaintiffs have submitted that a suit was filed for the specific performance of the agreement. The property described in Annexure I and III are the subject matter of the agreement and the property described in Annexure II is totally a different property which is entirely owned by the Plaintiffs and the said property is not a matter of dispute and the construction is already going on at the said property. The construction on the property in Annexure II and construction on property in Annexure I are two separate issues and not to be mixed up with the terms and conditions of the agreement. Therefore, the learned Judge has committed an error while passing the order of status-quo in respect of the three properties. He submitted that now he has moved this Appeal in respect of vacating the injunction in respect of the property described in Annexure II only and not in Annexure I and III.

6. Per contra, the learned senior counsel for the Respondents while opposing this Appeal has submitted that the Plaintiffs have not

come before the Court with clean hands and they have suppressed the material facts especially the terms and conditions in respect of the development on the basis of amalgamation of the two properties i.e. the lands described in Annexure I and II. He argued that the subject matter is not only Annexure I and II but the amalgamation of both the properties and joint development of the properties are the terms and conditions in the agreement. Therefore, the property in Annexure II cannot be carved out separately and the order passed by the learned trial Judge granting status-quo on all the properties is correct. He further submitted that the Plaintiffs cannot take advantage of the agreement for himself by which is obligatory on their part and they owe denying requisite performance to the Respondents. He submitted that recently the Respondents have come across the information that the Plaintiffs have entered into an agreement with the Corporation for the additional amenities whereby the Plaintiffs agreed to transfer the land admeasuring 443 Sq.Mtrs. from the properties described in Annexure I and III to transfer to the Corporation for obtaining additional FSI. He pointed out that the land mentioned in Annexure III was agreed to be transferred in favour of the Plaintiffs by the Respondents with understanding that the said land would be

transferred to MMRDA after amalgamation and to facilitate the sanctioning of the scheme. He relied on the clause 9.4 of the impugned agreement wherein it is mentioned that if at all amalgamation is not possible or the Rental Housing Scheme is not sanctioned then the agreement shall stand frustrated and will be terminated. By this clause, the properties described in Annexure I and III are to be returned to the Respondents and the agreement will be terminated. Thus the learned senior counsel submitted that if the injunction is vacated, the Defendants will suffer irreparable losses and the Defendants have made out a *prima facie* case grant of status-quo.

7. The learned senior counsel in reply has submitted that in termination clause 9.4 it is mentioned that if the Rental Housing Scheme is not sanctioned, the agreement will be frustrated. He submits that clause 9.4 does not say about the amalgamation. He submitted that there is novation of the contract and therefore, he has filed this suit for a specific performance.

8. On hearing the submissions of the learned senior counsel of both the parties and after going through the documents especially

the impugned agreement and the relevant clauses mentioned therein, it appears that the amalgamation of the plot was optional or not is a matter of evidence and also the interpretation of the impugned agreement. *Prima facie* on plain reading of the relevant clauses in the agreement pointed out by the senior counsel of the Plaintiffs, the development rights to submit the plan for amalgamation of both the lands is also mentioned, however it is also mentioned that amalgamation is optional and is a decision of the Plaintiffs. At this stage, the amalgamation is refused by the MMRDA and the Rental Housing Scheme is not executable or not is a disputable question but *prima facie* the property described in Annexure II is an exclusive property of the Plaintiffs.

9. The Plaintiffs have got the plan approved from the Corporation in the year 2010 and Corporation has issued IOD prior to 2012 for the construction on the land in Annexure II. As per this approved plan, the Plaintiffs are carrying out the construction. Thereafter, the agreement was executed by both the parties on 27<sup>th</sup> July, 2012. Therefore, I am of the view that the construction on the land Annexure II can not be stopped if it is going on as per the

approved plan. To that effect, I vacate the injunction granted by the trial Court in respect of the property described in Annexure II. However, as pointed out by the learned senior counsel for the Respondents and also agreed by the learned senior counsel for the Plaintiffs that the Plaintiffs have entered into an agreement for the additional amenities with the Corporation in January, 2015 for transfer the total area of 443 sq.mtrs. from the lands described in Annexure I and III for the purpose of additional amenities.

10. I have perused the photographs where the buildings are standing and therefore no such order of status-quo can be granted which may cause irreparable loss to the Plaintiffs in respect of creating third party interest and affect the development of the land described in Annexure II. The property in Annexure I is owned by the Respondents and the property described in Annexure III was transferred by the Respondents to the Plaintiffs in anticipation of sanction of the scheme and thereafter which was to be transferred to MMRDA. Therefore, as the said sanction is not obtained, I am of the view that the Plaintiffs are not entitled to have the benefit of this agreement of the year 2015 with the Corporation and the said

agreement though is registered, Plaintiffs are restrained to enjoy the benefits/advantage of the additional amenities in respect of the property arising out of the said agreement of January, 2015 in respect of lands described in Annexure I and III.

11. Hence, the Appeal from Order is allowed in the above terms.

12. The learned counsel for the Respondents submitted that this order be stayed for six weeks. However, considering the fact that already four buildings are constructed and other buildings are under construction upto second floor, the further construction will be subject to the outcome of the Special Leave Petition, if any. The suit be expedited.

13. Accordingly, the Appeal from Order and the Civil Application stands disposed of.

**(MRS.MRIDULA BHATKAR, J.)**