

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.237 OF 2015

Gorkap Properties & Investment Pvt.Ltd. .. Appellant

Vs.

Asha Krishna Co-op.Housing Society Ltd. .. Respondent

Mr.S.J.Mishra i/b M/s.SRS Legal for the appellant

CORAM : K.K.TATED, J.
DATED : 04/08/2015

PC:

1 Heard the learned counsel for the appellant.

2 This Appeal from Order is preferred by the plaintiff challenging the order dated 10.11.2014 passed by Bombay City Civil Court at Bombay in Notice of Motion No.1252 of 2013 declining to grant any relief in favour of the plaintiff.

3 In the present proceeding, the appellant plaintiff filed Special Civil Suit No.4642 of 2013 in the Bombay City Civil Court at Bombay for an order and injunction restraining respondent Society from granting and or assigning re-development right of the suit property being Asha Krishna Building, lying, being and situate on the plot of land bearing Survey No.28, Hissa No.2 (Part), CTS No.411, admeasuring 2592 sq.meters or thereabout at Mauje – Mohili, Taluka –

Kurla, Mumbai Suburban District to any third party save and except the plaintiffs in any manner whatsoever. In that suit, the plaintiff preferred Notice of Motion No.1252 of 2013 for following reliefs:

- “(a) pending the hearing the final disposal of the Suit, the Defendants be further by an interim and ad-interim orders of injunction of this Hon'ble Court be restrained from granting and/or assigning redevelopment right of the Suit Property being Asha Krishna Building, lying, being and situate on the plot of land bearing Survey No.28, Hissa No.2 (Part), CTS No.411, admeasuring 2592 sq.meters or thereabout at Mauje – Mohili, Taluka – Kurla, Mumbai Suburban District, to any third party save and except the plaintiffs in any manner whatsoever;
- (b) interim and ad-interim reliefs in terms of prayer (a) above;
- (c)
- (d)”

4 The learned counsel for the plaintiff submits that the Society in their General Body Meeting held on 11.11.2012 at 1 p.m. decided to appoint plaintiff as a developer of the suit premises. He submits that in that meeting, Society has passed a resolution and also decided the terms and conditions for development of the said property. The minutes of the meeting dated 11.11.2012 of the respondent Society reads thus:

“The following below given points were discussed:

1. Developer has agreed to provide 32.5% extra carpet area on the existing carpet area.
2. Developer has agreed to provide 32.5% extra on 50% of the estimated terrace area, if it is to be provided in the flat area. Else 32.5% extra shall be provided if terrace has to be retained.
3. Developer has agreed to provide podium parking for all the flat owners (55 members). The points will be discussed at the time of plan provided.
4. Developer has agreed to pay rent as mentioned below:
Rs.17000 for One Hall Kitchen
Rs.23500 for One BHK
Rs.38000 for Terrace Flat
10% increment rent shall be paid after every 11 months
50% brokerage charges will be paid by the Developer of the rent amount. Rent payment schedule shall be as follows:
(A) 15 months rent in advance;
(B) 5 months + 5 months + 5 months rent vide PDCs.
(C) 6 months rent vide last PDCs (for grace period).
5. To the event of delay in handing over of the possession, penalty of Rs.8 Lacs will be paid by the Developer to the Society per month (point to be discussed with Society's Legal Advisor).
6. Stamp Duty and Registration charges will be borne by the Developer of the new flats.
7. Society shall revert after consultation with the

Advocate regarding flat registration policy.

8. Developer will obtain discount of 15% to existing flat owners of Society members.
9. Developers will revert to the Society regarding Conveyance of the property in the favour of Society at their cost.
10. Developer will pay Rs.1 Lac as signing amount to each flat member and Bank Guarantee of Rs.5 Crores to the Society.
11. The Society's Legal Advisor's charges will be borne by the Developer. (Giving two lawyer choice for negotiating lawyers fees)."

5 The learned counsel for the plaintiff further submits that as per the minutes of the said meeting, the plaintiff paid a sum of Rs.3,00,000/- to the landlady i.e. Smt.Ashadevi Ramkrishna Yadav. He further submits that he has taken all the steps for execution of the conveyance in favour of the society from the land lady. He further submits that even the landlady executed the agreement dated 12.11.2012 in favour of the plaintiff in respect of the suit property. He submits that when the plaintiff learnt that the Society is in search of some other developer for development of the suit property, he filed the present Short Cause Suit No.4642 of 2013 in the Bombay City Civil Court at Bombay. He submits that if the Society is not restrained by an order of injunction from allotting the development of the said property to any other person, irreparable loss and injury will be caused to the plaintiff. He submits that on the basis of the terms and conditions as decided by the respondent Society in meeting held on 11.11.2012,

plaintiff already acted. Hence, plaintiff is entitled interim injunction restraining the respondent from acting contrary to the minutes passed in General Body Meeting held on 11.11.2012. On the basis of these submissions, the learned counsel for the plaintiff submits that this Hon'ble Court be pleased to set aside the order dated 10.11.2014 passed by Bombay City Civil Court at Bombay and allow the Notice of Motion No.1252 of 2013.

6 I have heard the learned counsel for the plaintiff at length. Admittedly, in the present proceeding there is no agreement between the plaintiff and the Society for re-development of the property. Plaintiff is relying only on the minutes of the meeting of General Body Meeting held on 11.11.2012 of the respondent defendant. That cannot be termed as agreement between plaintiff and defendant. These facts are considered by the Trial Court in paragraph 8 of the impugned order. As there is no agreement between plaintiff and defendant in respect of the development of the suit property, I do not find any reason to interfere with the well reasoned order dated 10.11.2014 passed by Trial Court. Hence, Appeal from Order stands rejected.

(K.K.TATED, J.)