

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1044 OF 2015
ALONGWITH
CHAMBER SUMMONS NO.1320 OF 2015
IN
SUIT NO.426 OF 2015

Axay Raj Build Well P. Ltd. ... Applicant

In the matter of

D N Nagar Ashtavinayak CHS Ltd. ... Plaintiff
Vs.

Axay Raj Build Well Pvt. Ltd. ... Defendant

Pradeep Sancheti, Sr. Counsel, a/w. Mr. Sagar, Adv. a/w. Asha Bhuta, Adv. & Naved Chawdhary, Adv. i/b. Bhutta & Associates for plaintiff.
Mr. Zuben Behramkamdin, Sr. Counsel, a/w. Mr. Dhiren Shah, Adv. a/w. Jenifer, Adv. a/w. Jayesh Rathod, Adv. a/w. Sanskruti Kadam, Adv. i/b. Dhiren H Shah, Adv. for defendant.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 16th October, 2015.

P.C. :

1. This Notice of Motion is taken out by the defendants for reference of the suit for arbitration. The development agreement between the parties contains of clause of arbitration which runs thus :

DISPUTES : In case of any dispute between the Society, its Members and the Developer, the same shall be referred to the Arbitration in accordance with the provisions of the Arbitration & Conciliation Act.

2. Hence the arbitration clause is very wide. Any dispute between the parties is to be referred to the arbitration. The plaintiff

has raised dispute in the suit with regard to the construction / development. The plaintiff has contended that instead of 320 flats only 216 flats have been constructed and other premises as commercial premises are sold to third parties. Such a dispute cannot be heard by the Court. The dispute has to be referred to the arbitration as it relates to the development of the property.

3. The defendant contend that there are 60 such flats. All these aspects would have to be considered in the arbitration to determine the plaintiffs right in development. Hence the Notice of Motion is referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996.

4. The suit as also Chamber Summons No.1320 of 2015 are disposed of accordingly.

5. By consent the ad interim order dated 21st September, 2015 shall continue for two weeks from today.

6. Notice of Motion No.1044 of 2015 is also disposed of accordingly.

(ROSHAN DALVI, J.)