

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITIONS NO.594 OF 2016**

M/S. HAVI HOMES INFRASTRUCTURE
PVT. LTD. AND 3 ORS.

....Petitioners

V/S

ASHVIN PATEL, REP. HEREIN
BY THEIR CONST. ATT.
MR. FILIPE FERNANDES & ANR.

...Respondents

Shri S. Mahambrey, Advocate for the Petitioners.

CORAM : C.V. BHADANG, J.

DATE : 24th JUNE, 2016

ORAL ORDER :

On hearing the learned Counsel for the petitioners, I find that there is no case for interference made out in this petition.

2. The petitioners are the original defendants in Regular Civil suit No.6/2010 filed by the respondent. According to the plaint allegations the respondent had entered into an agreement with the petitioners for purchase of a villa. Eventually, the construction was not effected and the transaction did not materialize. Hence,

the respondent filed a suit for refund of the earnest amount of Rs.4,18,850/- together with compensation of Rs.2,00,000/- along with interest. It appears that apart from the respondent one Mrs. Ajita Patel and Mr. Mayur Desai had also entered into similar agreements for purchase of separate villas with the petitioners. Mrs. Ajita Patel had filed a similar suit for refund of the earnest amount and compensation, being Regular Civil Suit No.5/2010 while Mr. Mayur Desai had filed a suit being Regular Civil Suit No.7/2010. Mrs. Ajita Patel withdrew her suit on 6/10/2012 while Mr. Mayur Desai withdrew the suit on 9/06/2015. The petitioners want to produce copy of applications for withdrawal and the order passed thereon, which application has been rejected by the learned Trial Court by the impugned order dated 21/04/2016 on the ground that the said documents are not relevant to the issue involved in the suit. Feeling aggrieved, the petitioners are before this Court.

3. It is evident that there were separate transactions entered into between the respondent and the plaintiffs in the aforesaid two suits and the petitioners herein. In such circumstances, it is difficult to envisage, as to how withdrawal of the two suits would have any relevance with the controversy involved in the suit filed by the respondent.

4. It is contended on behalf of the petitioners that Mrs. Ajita Patel had visited the site on behalf of the respondent and others who had purchased the villas and at her instance the suits are filed. The learned Counsel also submitted that there is a common cause of action, arising for filing of these suits. A perusal of the application for production of the documents filed by the petitioners clearly shows that, no such case has been set up. Even otherwise merely because Mrs. Ajita Patel had visited the site, in order to find out the

status of the construction, on behalf of the respondent and others, would not be sufficient to say that there is a common cause of action, as the transactions were distinct.

5. In such circumstances, no exception can be taken to the finding recorded by the Trial Court that the documents are not relevant for deciding the controversy in the suit. The petition is without any merit and is dismissed in limine.

C.V. BHADANG, J.

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