

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 2209 OF 2016

M/S. MAREDIA DEVELOPERS

...Petitioner

Versus

DINESH P. HINGOO AND ORS.

...Respondents

....

Mr. Sanjeev R. Singh, Advocate for the Petitioner.

Mr. I.K. Tripathi a/w. Pramod Gautam & Bhagyashri Gawas,
Advocate for Respondent Nos.1 & 2.

Mr. Vinod Mahadik, Advocate for Respondent No.3 – BMC.

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CORAM : R. G. KETKAR, J.

DATE : 03rd MARCH, 2016

P.C.

1. Heard Mr. Singh, learned Counsel for the petitioner, Mr. Tripathi, learned Counsel for respondent Nos.1 and 2 and Mr. Mahadik, learned Counsel for respondent No.3, at length.

2. Mr. Singh seeks leave to delete respondent Nos.4 to 7 from this Petition as respondent Nos.1 and 2 (original plaintiffs), and respondent No.3 (original defendant No.4), are the only contesting respondents and no relief is claimed against respondent Nos. 4 to 7 in this Petition. In view thereof, leave to delete respondent Nos.4 to 7 is granted. Amendment shall be

carried out forthwith.

3. Rule. Mr. Tripathi waives service on behalf of respondent Nos.1 and 2 and Mr. Mahadik waives service on behalf of respondent No.3. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant No.1' has challenged the judgment and order dated 1.2.2016 passed by learned Judge, presiding over Court Room No.6 of City Civil Court at Dindoshi (Borivali Division), Goregaon, Mumbai in Notice of Motion No.3230/2015 in L.C. Suit No.251 of 2008. By that order, learned trial Judge rejected the Motion taken out by defendant Nos.1 to 3 for setting aside the order dated 23.11.2015 directing closure of evidence of defendant Nos.1 to 3.

5. Respondent Nos.1 and 2, hereinafter referred to as the 'plaintiffs', instituted the suit for declaration, perpetual injunction amongst other prayers. On 31.8.2015, the plaintiffs

evidence was closed and the matter was adjourned to 28.9.2015 for defendant Nos.1 to 3's evidence. On that date, defendant Nos.1 to 3 sought adjournment and it was adjourned to 26.10.2015. On 26.10.2015, application for adjournment was made and it was adjourned to 23.11.2015 for leading evidence by defendant Nos.1 to 3.

6. Mr. Singh submitted that the representative of defendant No.1 who was looking after the litigation left Mumbai for attending religious function at Ahmadabad on 9.11.2015 and returned only on 27.11.2015. In the meantime, on 23.11.2015, learned trial Judge passed order directing the matter to proceed without evidence of defendant Nos.1 to 3. In other words, learned trial Judge passed no evidence order against defendant Nos.1 to 3. Defendant Nos.1 to 3 took out Notice of Motion on 27.11.2015 for setting aside order dated 23.11.2015 directing the matter to proceed without evidence of defendant Nos.1 to 3. By the impugned order, learned trial Judge rejected the motion on 1.2.2016. It is against this decision, defendant No.1 has instituted the present Petition.

7. Mr. Singh submits that in fact affidavit of evidence of

Mr. Rashid Gulam Rasool Maredia, partner of defendant No.1 was affirmed on 5.12.2015. However, inadvertently that was not brought to the notice of the learned trial Judge when the motion was argued. Mr. Singh states that the next date before the trial Court is 11.3.2016. He assures that on that date affidavit of Mr. Rashid Gulam Rasool Maredia affirmed on 5.12.2015 shall be tendered in the Court by giving advance copy to the other side. Statement made by Mr. Singh is accepted.

8. Learned trial Judge rejected the motion mainly on the ground that the matter was adjourned at the instance of defendants on 28.9.2015 and 26.10.2015. No steps were taken on those dates or even on 7.12.2015 and 11.1.2016. Learned trial Judge also observed that though defendant Nos.1 to 3 contended that Mr. Rashid Gulam Rasool Maredia went to Ahmadabad on 9.11.2015 and returned on 27.11.2015, the same was not substantiated. Having regard to the year of institution of the suit, namely, 2008, learned trial Judge rejected the motion.

9. As affidavit of evidence of Mr. Rashid Gulam Rasool Maredia affirmed on 5.12.2015 is ready and is to be tendered in

the trial Court on 11.3.2016, in my opinion an opportunity deserves to be granted to defendant Nos.1 to 3, subject to payment of costs of Rs.15,000/- to be paid to the Advocate representing the plaintiffs or deposited in the trial Court on or before 10.3.2016. Nazir of concerned Court to accept said amount if deposited by the defendant Nos.1 to 3. If such amount is not paid to the Advocate for plaintiffs or deposited in the trial Court on or before 11.3.2016, the impugned order shall stand revived. Defendant Nos.1 to 3 shall file affidavit of evidence of Mr. Rashid Gulam Rasool Maredia affirmed on 5.12.2015 in the trial Court on the next date of hearing after giving advance copy to the other side. Liberty is reserved with the parties to apply for expeditious disposal of the suit. If such an application is made, learned trial Judge is expected to pass appropriate orders. Rule is made absolute in aforesaid terms.

10. All parties including City Civil Court and Nazir attached to that Court shall act upon an authenticated copy of this order.

(R. G. KETKAR, J.)