

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

CIVIL REVISION APPLICATION NO.388 OF 2013

Shri Subhash Anant Avsare ..Applicant

Vs

M/s Om Land Realty .. Respondent

WITH

**APPEAL FROM ORDER NO.579 OF 2013
WITH
CIVIL APPLICATION NO. 705 OF 2013 IN AO/579/2013**

Shri Subhash Anant Avsare ..Appellant

Vs

M/s Om Land Realty .. Respondent

Mr. Vineet Naik, Senior Advocate, i/b Sachin Chavan, Advocate for Applicant/Appellant.

Mr. N.V.Walawalkar, Senior Advocate, along with Mr Prasad Dani, Senior Advocate i/b Jeetendra Sachdev, Advocate for Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 16/03/2016**

PC:

1. By administrative order dated 24.9.2013 passed by the Honourable Chief Justice, Appeal from order was ordered to be heard along with Civil Revision Application.
2. Heard Mr. Vineet Naik, learned senior counsel for the applicant and Mr. Narendra Walawalkar instructed by Mr. P.S.Dani,

learned senior counsel for respondent in Civil Revision Application.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgment and order dated 11.2.2013 passed by the learned Civil Judge, Senior Division, Panvel below Exhibit-30 in Special Civil Suit No.601 of 2010. By that order, the learned trial Judge rejected the application made by the applicant, hereinafter referred to as 'defendant' under Order 39, Rule 11 of C.P.C. for dismissing the suit for noncompliance of order dated 12.12.2011 passed below Exhibit-22.

4. The respondent, hereinafter referred to as 'plaintiff', made application Exhibit-22 showing its readiness and willingness to deposit amount of Rs. 50,00,000/- in the trial Court as per the terms of the Agreement dated 2.6.2010. By order dated 12.12.2011, the learned trial Judge directed the plaintiff to deposit the amount of Rs.7,92,00,000/- in the Court before the next date. In that order, the learned trial Judge observed that the plaintiff expressed his willingness to deposit the entire consideration. The learned trial Judge observed that total consideration was Rs.8,80,16,200/-. Out of that, the plaintiff had paid Rs. 88,16,200/-. As the plaintiff expressed his willingness to deposit the entire consideration, the learned trial Judge

directed the plaintiff to deposit Rs.7,92,00,000/- (Rs.8,80,16,200/- - Rs. 88,16,250/-) before the next date of hearing.

5. The plaintiff thereafter moved application Exh.27 for recalling order dated 12.12.2011 passed below Exh.22. By order dated 5.10.2012 the learned trial Judge rejected the application. As the plaintiff did not comply order dated 12.12.2011, the defendant took out application under Order 39 Rule 11 of C.P.C. for dismissing the suit. By the impugned order, the learned trial Judge rejected the application. It is against this decision, the defendant has instituted present Civil Revision application.

6. The defendant has also instituted Appeal from order challenging the judgment and order dated 11.2.2013 passed by the learned Civil Judge, Sr. Dn, Panvel below Exh.33 in Special Civil Suit No.601 of 2010. By that order, the learned trial Judge modified order dated 12.12.2011 passed below Exh.22 and instead of depositing Rs. 7,92,00,000/- in the Court, permitted the plaintiff to furnish Bank Guarantee of that amount.

7. Mr. Walawalkar, upon taking instruction from the respondent, states that the plaintiff will deposit Rs.50,00,000/- in the trial Court within four weeks from today and will not seek further extension of time for depositing the said amount. He further states that if the plaintiff does not deposit Rs. 50 lacs within 4 weeks from today in the trial Court, the impugned order

shall stand set aside and application at Exh.30 filed by the defendant under Order 39, Rule 11 shall stand revived without further reference to the Court. Mr Naik has no objection for adopting this course.

8. In view thereof, Civil Revision Application as also Appeal from order is disposed of in the following terms:

(i) The plaintiff shall deposit amount of Rs. 50,00000/- within four weeks from today in the trial Court under due intimation in writing to the defendants' Advocate in the trial Court.

(ii) In case the amount is so deposited, the order impugned in the C.R.A. shall stand confirmed. As the plaintiff is willing to deposit Rs. 50 lacs within 4 weeks from today in the trial Court, the order impugned in Appeal from order shall stand set aside.

(iii) In case the plaintiff fails to deposit the amount of Rs. 50 lacs within four weeks from today, the order impugned in C.R.A. shall stand set aside and Application Exh.30 filed by the defendant shall stand revived without further reference to the Court.

(iv) In view thereof, for a period of four weeks from today, ad-interim order dated 20.6.2013 shall remain in force for a period of 4 weeks from today. It is clarified that notwithstanding continuation of ad-interim order, the trial Court shall accept the amount of Rs. 50 Lacs to be deposited by the plaintiff in

pursuance of this order and ad-interim order will not preclude the trial Court from accepting the amount. Without prejudice to the rights and contentions, the defendant is at liberty to apply for withdrawal of that amount, if so advised. If such application is made, the learned trial Judge will pass appropriate order thereof. If no application for withdrawal is made within two weeks from depositing the amount, the learned trial Judge will invest that amount in any nationalized Bank initially for a period of one year and the deposit shall be renewed during the pendency of the suit.

(v) In view of disposal of Appeal from order, Civil Application No. 705 of 2013 for stay does not survive and is disposed of as such.

(vi) All parties including trial court will act on the authenticated copy of this order.

(R.G.KETKAR, J.)