

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

***APPEAL FROM ORDER NO. 445 OF 2014
ALONG WITH
CIVIL APPLICATION NO. 521 OF 2014***

Shri Pankaj Chaudhary,
Residing at 617, Palms 1, Chs Ltd.,
Royal Palms, Sur-Mayur Nagar,
Goregaon (E), Aarey Milk Colony,
Mumbai – 400 065.

... Appellant

v/s

1 M/s.Bharat Infrastructure Engg. P Ltd.,
Bharat Group, 801, 802,
Peninsula Height, Juhu Lane,
Next to Oriental Bank,
Andheri (W), Mumbai – 400 062.

2 Taksha Spaces Pvt. Ltd.,
801, 802,
Peninsula Height, C.D.Barfiwala Marg,
Juhu Lane, Andheri (W), Mumbai – 400 062.

3 Goverdhangiri Co-op. Housing Socy. Ltd.,
At Plot No.14A, Off Survey No.161,
Bangur Nagar, M.G. Road,
Goregaon (W), Mumbai – 400 104.

... Respondents

Mr.Mayur Khandeparkar along with Mr.Abhijit Singh i/by Anil Mishra for the appellants.

Mr.Tushar Gujjar i/by Solicis Lex for Respondent Nos.1 to 3.

***CORAM: N.M. JAMDAR, J.
DATED : 8 MARCH 2016***

ORAL ORDER:

Heard learned counsel for the parties.

2 Learned counsel for the Appellant submitted that irrespective of what was urged in the Notice of Motion before the City Civil Court at Dindoshi, the right of the Appellant to receive 682,00 sq.ft. area by way of a flat bearing No.A/1203 is undisputed and there is admission to that effect in the say filed by Respondent Nos.1 and 2. He submitted that, in view of this clear acceptance of Appellant's right by Respondent Nos.1 and 2 and the fact that if this flat is given to the Appellant, the Appellant is willing to forgo his case of specific performance, an appropriate order directing Respondent Nos.1 and 2 to hand over Flat No.A/1203, be passed.

3 Learned counsel for the Respondents submitted that, if such relief is to be granted, it should be by way of overall settlement and cannot be granted in this Appeal.

4 As regard the settlement is concerned, the matter is pending in this Court from 2014 and is adjourned from time to time for the purpose of settlement. The matter was adjourned on 16 September 2014 by way of a last chance and it was made clear that, if no settlement is arrived at, the matter will proceed on merits.

5 As regard the request made by the learned counsel for the Appellant, the prayers in the Notice of Motion does not contain a

direction to Respondent Nos.1 and 2 in respect of Flat No.A/1203. Therefore, the Appellant will have to make a specific prayer in respect of this flat by way of taking out appropriate motion in the pending suit, which motion will be considered on its own merits.

6 Accordingly, without going into the further controversy between the parties and leaving it open to the Appellant to make appropriate prayer in respect of Flat No.A/1203, the Appeal is accordingly disposed of.

7 It is also submitted by the learned counsel for the Appellant that, in the reply filed by Respondent Nos.1 and 2, a statement has been made that the Respondents will not create third party right or any encumbrance in respect of Flat No.A/1203. Learned counsel for Respondent Nos.1 and 2, on instructions, states that this statement will be continued till further orders are passed by the City Civil Court.

8 Considering the fact that the Appellant has shown willingness to forgo certain claims and the disposal of Notice of Motion may not take long time, the City Civil Court, if such a motion is filed within four weeks from today, will give priority for disposal of the same, keeping in mind the earlier time bound commitments.

9 In view of disposal of the Appeal, the civil application is disposed of.

(*N. M. JAMDAR, J.*)