

Sequeira

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

***APPEAL FROM ORDER NO. 588 OF 2012  
Along with  
CIVIL APPLICATION NO. 764 OF 2012***

M/s.Siddhi Group  
A partnership firm  
through its partners  
1. Lalit P. Jain (H.U.F.)  
2. Narendra S. Jain (H.U.F.)  
3. Dhanajay Rajaram Raut  
having its office at 103,  
Jaibhavani Apartment,  
Pandit Dindayal Nagar, Vasai Road,  
Vasai (W), Dis. Thane -401 202.

... Appellant  
(Org. Plaintiff)

V/s.

M/s. Rashmi Housing (Pvt.) Ltd.,  
a Company Incorporated Under  
Companies Act, through its Director  
Shri Hemendra P.Bosmiya,  
Age: about 38 years, Hindu.  
Indian Inhabitant having office  
at B/215, Shanti Shopping Centre,  
First Floor, Opp. Railway Station,  
Mira Road (E), Tal & Dist. Thane

... Respondent.  
(Org. Defendant)

Mr.P.K.Dhakephalkar – Senior Advocate i/b Mr.Amol Mhatre, for  
the Appellant / Applicant.  
None for the Respondent.

***CORAM : N.M.Jamdar, J.***  
***Friday, 22 July 2016.***

**Oral Judgment :-**

The Appellant challenges the Judgment and Order passed by Civil Judge, Senior division, Vasai dated 14 February 2012 rejecting the Application filed by the Appellant for a grant of temporary injunction pending the Suit instituted by the Appellant.

2. The Appellant has filed a Special Civil Suit No.175 of 2011 for declaration, possession, damages and injunction against the Respondent. It is the case of the Appellant that on 6 September 2007, a development agreement was executed by the Pereiras as owners of the suit property on one hand and the Appellant-Plaintiff and the Respondent-Defendant as sub-developer on the other hand. According to the Appellant, the Respondent- sub-developer were to make a construction of over 55000 sq.ft. of the property and hand over the constructed portion to the Appellant-Plaintiff as consideration. According to the Appellant since the Respondent did not act as per the agreement, the Suit had to be instituted. The learned Civil Judge, by the impugned Judgment and order came to the conclusion that at that stage, if any injunction is granted it will create multiple difficulties and it was not equitable to do so. Accordingly, the application was rejected by the impugned order.

3. The Appeal was filed in the year 2012. While issuing notice on

4 September 2012, this Court had directed the parties to maintain status-quo. Thereafter the Appeal was admitted on 17 October 2012 and by way of interim direction the Respondent - sub-developer was directed to deposit an amount of ₹ 5,63,75,000 with the registry of this Court within four weeks and the order of status-quo was vacated, meaning thereby the Respondent-sub-developer was free to proceed with the construction.

4. Mr.Dhakephalkar, the learned senior Advocate for the Appellant submitted that the Appellant has good case on merits and the Respondent has not handed over the constructed area of 55000 sq.ft. and if no relief is granted the Appellant will be without remedy. It is further informed by the learned counsel that, even though the Respondent - sub-developer was permitted to proceed with the construction by vacating the order of status-quo in October 2012, in reality he has not been able to proceed and complete the construction. He submitted that various notices have been issued to the Respondent – sub-developer regarding violation of legal provisions.

5. This being the position there does not appear to be any apprehension that the Respondent will start construction atleast till the disposal of the Suit. The learned senior Advocate also accepts this position but submits that the Suit be expedited so that the dispute can be resolved early. In view of this submission, I do not think there

is any further order required to be passed. The request made by the learned counsel for the Appellant for expeditious disposal of the Suit deserves to be granted. I am of the opinion that the Appeal can be disposed of by directing that the deposit made by the Respondent - sub-developer in this Suit is continued till further orders to be passed by the learned Civil Judge. It will be open to the Appellant as well as the Respondent - sub-developer to make an application as regards this amount which is deposited. The learned Civil Judge, will consider the Application on its own merits. Appeal from Order is accordingly disposed of by confirming the impugned order passed by the Civil Judge Senior Division Vasai, dated 14 February 2012.

6. The learned Civil Judge will give priority to the disposal of the Suit and dispose of the Suit within period of one year from the date the writ of this Court is received. All the parties to co-operate with learned Civil Judge for early disposal. The deposit made by Respondent-sub-developer which is invested in the nationalised Bank will continue to be invested till further orders are passed as indicated above. All contentions of the parties on merits are kept open and it is clarified that the observations made by the learned Civil Judge, in the impugned order are prima facie.

7. The Civil Application also stands disposed of.

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