

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

**CIVIL REVISION APPLICATION NO. 640 OF 2015
WITH
CIVIL APPLICATION NO. 555 OF 2015**

M/s. Seven Sky Associates	 Applicant
Versus	
Mr. Manoj Prataprai Parekh & Ors.	 Respondents

Mr. Vaibhav Pandya a/w Abhay Mahimkar for Applicant in both applications.

Mr. Vishal Kanade a/w Deepak Lulia for Respondent No.1.

***CORAM : N. M. Jamdar J.
Thursday 13 October 2016***

ORAL ORDER

. By this Revision Application, applicant/defendant no.3 has challenged the order dated 7 August 2015 passed by the learned City Civil Court Judge, Dindoshi on the preliminary issue framed.

2. The respondent no.1/plaintiff has filed L. C. Suit No. 1747 of 2014 against the respondent nos.2 & 3 and the applicant. In the suit, the respondent no.1/plaintiff has described the

defendants as promoters within the meaning of Maharashtra Ownership Flat (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act. Thereafter the respondent no.1/plaintiff has referred to a Memorandum of Understanding on 12 January 2010, in which it is stated that this Memorandum is for sale of Ten flats. The respondent no.1/plaintiff has thereafter asserted that 90% of the total consideration has been paid and inspite of this position, the defendants are not handing over the concerned flats, which action of the defendant no.1 is in breach of the statutory obligations arising out of the provisions of the Act. With these averments, the relief is sought for a direction to the respondent nos.2 and 3/defendants to specifically perform statutory obligations under Maharashtra Ownership Flats Act and for a sale of the flats. The suit is valued at Rs. 1000/- being statutory obligation of the defendants arising under the provisions of Maharashtra Ownership Flats Act. An application for temporary injunction was taken out by the respondent no.1/plaintiff and the petitioner moved to the learned City Civil Court Judge for framing a preliminary issue under Section 9-A of the Code of Civil Procedure. The learned City Civil Court Judge framed the issue as regard pecuniary jurisdiction. As regard the provisions of Arbitration Act and Limitation Act, issue was not framed. The learned City Civil Court Judge held that the Court has jurisdiction to decide the suit.

3. The learned Counsel for applicant submitted that perusal of the agreement will show that the agreement cannot be construed as attracting the provisions of the Act. It was contended that the agreement not being under Section 4 of the Maharashtra Ownership Flats Act, fixed court-fees paid by the respondent no.1/plaintiff is not correct and the prayer in the suit is claiming charge to the amount of Rs.2,68,38,000/- and therefore this suit has to be valued on this amount.

4. The valuation will depend on the averments in the plaint and unless the claim and the averments made by the plaintiff is absurd and not tenable on the face of it, generally the Court will accept the averments made by the plaintiff. The entire claim of the respondent no.1/plaintiff is based on the provisions of Maharashtra Ownership Flats Act and alleged statutory obligation of the petitioner and other defendants. The learned Counsel for applicant has sought to contend, by taking me through the various clauses of the agreements that the agreement/memorandum cannot be stated to be one under Section 4 of the Maharashtra Ownership Flats Act. It cannot be said that the agreement on the face of it does not fall within the ambit of Section 4 of the Act. What is the exact nature of this agreement, whether the agreement is only a preliminary agreement to enter into further contract or whether it is a concluded agreement and what are the obligations and the rights of

the parties under the agreement, is a matter that will have to be decided at the time of trial. Going by the averments made in the plaint, the interpretation placed by the respondent no.1/plaintiff that the agreement is under the provisions of Maharashtra Ownership Flats Act and therefore the suit is valued at a fixed amount, cannot be stated to be an impossible interpretation.

5. Considering the fact that the issue of the valuation will depend on adjudication on the merits of the suit as to the nature of the agreement itself, the learned City Civil Court Judge was right in holding that this issue cannot be decided as a preliminary issue and the valuation made by the respondent no.1/plaintiff is proper and therefore the Civil Court has pecuniary jurisdiction. As far as the charge sought for the amount is concerned, this is an ancillary relief. The main relief sought for is enforcement of the agreement. Considering the fact that this issue would require trial, even if I am not inclined to interfere with the impugned order, it is clarified that at the time of trial, if the learned City Civil Court Judge comes to the conclusion that the agreement cannot be stated to be one under Section 4 of the Maharashtra Ownership Flats Act, then it will be open to the learned City Civil Court Judge to take such view as may be permissible in respect of the valuation and pecuniary jurisdiction of the Court.

6. The Civil Revision Application and the Civil Application are accordingly disposed of.

(N. M. Jamdar, J.)