

Ashik Jitendra Bhuta ... Applicant/Plaintiff
versus
Metallica Industries Ltd. and Ors. ... Defendants

Mr. Pravin Samdani, Senior Advocate with Mr. Mayur Khandeparkar, Mr. Chetan Yadav, Mr. Prashant Ghelani, Ms. Triveni Jani i/by M/s. Markand Gandhi and Co., for Plaintiff/Applicant.

Mr. Raj Patel i/by M/s. RMG Law Associates, for Defendant No.1.

Ms. Kainaz Irani i/by Ms. Kavita Shah, for Defendant No.3.

Mr. Dipesh U. Siroya, for Defendant No.5.

Mr. R.Y.Sirsekar, for Defendant No.7 Corporation.

Mr. Goenka i/by M/s. Goenka Law Associates, for State Bank of India.

Mr. A.B.Khandare, AE (B.P.) and Mr. Chaudhari, S.E. (B.P.) present.

Mr. Jinendra Jain, present.

CORAM: S.J. KATHAWALLA, J.

DATE: 30th NOVEMBER, 2016

P.C.:

1. In the above Suit, Defendant No.1 is Metallica Industries Ltd. Admittedly, since the last several years the share holding of Defendant No.1 is held by Mr. Jitendra Jain, Mr. Jinendra Jain, Mr. Ketan Shah and their family members, who are also partners in several partnership firms/companies, known as the Kamala Group of firms / Companies. Through the said partnerships/companies, the above three

individuals have undertaken several development projects, collected crores of rupees from the purchasers of flats / galas but have not delivered to them the premises as agreed even after 6 to 7 years. In one of the matters i.e. Suit No.933 of 2016, this Court had observed that several forged and fabricated Commencement Certificates (CC) qua the subject project are floating around and on the strength of such forged and fabricated CC, Kamalashri Builders have fraudulently obtained orders from the City Civil Court at Dindoshi.

2. In the present case, the Plaintiff seeks specific performance of Agreements executed by and between the Plaintiff and Defendant No.1, all dated 26th September, 2012 being Exhibits E, L, M and N to the Plaint (the said Agreements). The subject matter of the suit are four commercial galas.

3. Defendant No. 5 is an Association viz. Kamla Industrial Park Gala Owner's Welfare Association (KIPGOWA). The said Association is supporting the Plaintiff and has submitted that out of 389 galas constructed by Defendant No.1, their members (including the Plaintiff) have purchased 268 galas for a total consideration of Rs. 77,69, 32,000/- and the consideration paid till date is Rs. 65,52,04,175/-, leaving a balance of Rs. 12,17,27,725/-. The Association has further stated that an additional amount is paid by some of the members of Defendant No. 5 towards Collector's fees to Defendant No. 1 aggregating to Rs. 3,67,68,000/-. It is submitted on behalf of Defendant No. 5 that the members of the Association which includes the Plaintiff,

despite having paid crores of rupees to Defendant No. 1 have since a long time not only received possession of the respective galas from Defendant No. 1 but Defendant No. 1 has stopped construction activities since January, 2014.

4. Today, the above Chamber Summons seeking amendments to the Plaint is taken up for hearing.

5. The learned Senior Advocate appearing for the Plaintiff and Defendant No.5 has pointed out that even in the present matter, CCs purportedly issued in the name of Mr. Jitendra Jain, partner of Kamala Corporate Park, (at pages 77-78 of the Plaint and 23-24 of the Affidavit in support of the Chamber Summons) are forged and fabricated. It is submitted that only the CC which is annexed at page 43 of the Chamber Summons, appears to be a genuine CC. In view thereof, the Officers from the concerned department of the Corporation were directed to remain present at 3.00 p.m today. The officers are accordingly present. After going through the documents, they have informed the Court that the submission of the Plaintiff namely that the CC's at pages 77 and 78 of the Plaint and at pages 23-24 of the Affidavit in support of the Chamber Summons, are forged and fabricated and the CC at pages 42 and 43 of the Chamber Summons is genuine.

6. Upon perusing the papers, it is noted that one of the forged/fabricated CC (at page 78 of the Plaint), has an endorsement of the Branch Manager, State Bank of India, S.V.Road, SME Branch, Borivali (W), Mumbai, stating that the same is

verified with the original. In the circumstances the following order is passed :

- i. The Chamber Summons is allowed in terms of prayer clauses (a). Amendments to be carried out within a period of one week from today.
- ii. Mr. Uday Pal, Branch Manager, State Bank of India, S.V.Road, Branch, Borivali (W), Branch, Mumbai shall appear before this Court on 1st December, 2016 at 3.00 p.m. and produce before this Court the entire record available with regard to the loans sanctioned by the State Bank of India Borivali (W) Branch or any other branch, pertaining to the property of Metallica Industries Ltd.
- iii. The Executive Engineer, Building Proposal (W.S.) R Ward, is directed to remain present before this Court on 1st December, 2016 at 3.00 p.m., along with all the original records in the matter.
- iv. A copy of this order shall be forthwith forwarded to the Chairman, State Bank of India, Mumbai and to the Joint Commissioner of Police, EOW, Mumbai.

Stand over to 1st December, 2016 at 3.00 p.m.

(S.J.KATHAWALLA, J.)