

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 2110 OF 2015****ALONG WITH****NOTICE OF MOTION NO. 136 OF 2016****IN****SUIT NO. 1064 OF 2015**

Excel Enterprises, a partnership firm registered under)
Partnership Act, 1932, having office at B-10, Bellona Building)
No.1, Pant Nagar, Ghatkopar (East), Mumbai)..Applicants/
Plaintiffs

In the matter between:

Excel Enterprises, a partnership firm registered under)
Partnership Act, 1932, having office at B-10, Bellona Building)
No.1, Pant Nagar, Ghatkopar (East), Mumbai)..Plaintiffs

versus

1. Mahendra Karsandas Mehta)
Age - not known, Occupation : Business)
of Mumbai, Indian Inhabitant residing at)
21, Janjira House, Rajawadi, Ghatkopar (East),)
Mumbai-400 077)
2. Sarla Ajit Paleja,)
Age - 63 years, Occupation: Housewife)
of Mumbai, Indian Inhabitant residing at)
19, Janjirawadi, Rajawadi Road No.1,)
Opp. Rajawadi Post Office, Ghatkopar (E),)
Mumbai-400 077)
3. Meena P. Gada,)
Age 60 years, Occupation - Housewife,)

- of Mumbai, Indian Inhabitant, residing at)
 Nirmala Niketan Co-operative Housing Society,)
 Marathi Colony, Opp. Dominos Pizza, Dahisar (East))
 Mumbai.)
4. Hetal Hitesh Ramangia)
 Age -- knot known, Occupation: Business)
 of Mumbai Indian Inhabitant residing at A/2 Ground)
 Floor, Ambe Smruti Society, Devi Dayal Road,)
 Mulund (West), Mumbai-400 080)
5. Prakash S. Dani,)
 Age knot known, Occupation : Business)
 of Mumbai Indian Inhabitant, residing at)
 197/A -- 10, Indralok Co-operative Housing Society,)
 90 feet Road, Opp. Panchavali, Ghatkopar (East),)
 Mumbai-400 077)
6. Jignesh Ashwin Khilani,)
 Age - not known, Occupation : Business)
 of mumbai, Indian Inhabitant residing at Alag Property)
 Shop No.2, Prabhu Krupa, Tilak Road, Opp. Lions)
 Garden, Ghatkopar (East),)
 Mumbai-400 077)..Defendants

Mr. Gaurav Joshi, Senior Advocate, along with Mr. Zal Andhyarujia, Mr. H.S. Raybatha, Mr. Jayesh Mistry, instructed by M/s. RMG Law, for the Applicants/Plaintiffs.

Mr. Vimlesh Singh for Defendant No.1.

Mr. Naushad Engineer, instructed by M/s. Ashok Purohit & Company, for Applicant in Notice of Motion (L) No. 127 of 2016 .

CORAM: S.J. KATHAWALLA, J.
Judgment reserved on: 15th April, 2016
Judgment pronounced on: 6th May, 2016

JUDGMENT:

1. The above Suit is filed by the Plaintiffs for a declaration that there is a valid and binding Agreement/MoU dated 28th September, 2012 (Exhibit-D to the Plaint) and Deed of Assignment dated June, 2014 (Exhibit-E to the Plaint), between the parties to the said Documents, and that this Court be pleased to pass an order and decree against Defendant No. 1 to specifically perform and comply with his obligations under the MoU dated 28th September, 2012. The Plaintiffs have subsequently amended the Plaint and have inter alia also sought a declaration that the Plaintiffs, as co-owners of the property admeasuring 1957 sq.yds. equivalent to 1636.28 sq. mtrs. or thereabouts, bearing CTS Nos. 4581 to 4600 (Part), near Rajawadi Post Office, Ghatkopar (East), Mumbai-400 077, together with the structures standing thereon and known as 'Janjira Chawl' and 'Janjira House' ("the Suit Property"), are entitled to redevelop the Suit Property, by reconstruction of the buildings, on such terms and conditions as this Court may deem fit and proper, including, inter alia, by maintaining accounts with regard to the redevelopment of the Suit Property. The Plaintiffs being 50% co-owners of the Suit Property, on which the buildings 'Janjira Chawl' and 'Janjira House' stand, in a dilapidated state, posing grave threat to the lives of the tenants and their family members residing therein, have taken out the above Notice of

Motion seeking permission of the Court at the interim stage to redevelop the Suit Property as agents of the Court Receiver, without royalty, and on such terms as this Court deems fit to grant.

2. The facts which have led the Plaintiffs to file the present Suit, are briefly set out hereunder:

2.1 The Plaintiff is a Partnership Firm, and is in the business of real-estate development.

2.2 One Karsandas Vanmalidas Sarvaya was the Owner of the property being plot of land bearing Survey Nos. 4581 to 4600, admeasuring 2685 sq.yds. equivalent to 2228.55 sq.mtrs. or thereabout, lying and being at Rajawadi Post Office, Ghatkopar (East), Mumbai-400 077, at Ghatkopar Kirol Village Gaothan Land, in the registration Sub-District and District Mumbai Suburban, together with the structures standing thereon and known as 'Janjira Chawl' and 'Janjira House' ("the Larger Property").

2.3 In or about 1975, the said Karsandas demised a portion of the Larger Property admeasuring 872 sq. yards equivalent to 728 sq.mtrs. or thereabout, bearing CTS Nos. 4581 to 4584, vide an Agreement to Lease dated 10th January, 1975, to one Mohan Velji Patel and Nanji Devji Patel, on terms and conditions,

and for the rent reserved therein. The present Suit does not relate to the said portion of the land.

2.4 The said Karsandas passed away on 10th January, 2003, leaving behind his last Will and Testament dated 10th January, 1998. As per the said Will, the Suit Property has been bequeathed by the said Karsandas to his two sons viz. Navnit Karsandas Mehta, the son from his first wife -- Chaturlaxmi and Mahendra Karsandas Sarvaya, Defendant No. 1 herein, being the son of his second wife -- Jasumati. Defendant Nos. 3 and 4 are the real sisters of Defendant No. 1, who have been joined herein as the formal parties. The said Navnit Karsandas Mehta and/or his legal heirs have not been joined as parties since as mentioned hereinafter, they have already conveyed their 50 per cent undivided share, right, title and interest in the portion of the Larger Property to the Plaintiffs.

2.5 Defendant No. 1 was in need of money and had thereafter approached Defendant Nos. 4 to 6 who advanced a sum of Rs. 36,00,000/- against the mortgage and security of 50 per cent undivided share of Defendant No.1 in the Suit Property, on the terms and conditions mentioned therein. The said amount was to be repaid with interest at the rate of 24% per annum.

2.6 Pursuant to further negotiations, Defendant No.1 and Defendant Nos. 4 to 6 executed a Second MoU dated 28th September, 2012, whereby Defendant No. 1, on the terms, conditions and considerations recorded therein, agreed to grant development rights to Defendant Nos. 4 to 6 in the Suit Property for the lump sum consideration amount of Rs. 5,00,00,000/- (Rupees Five Crores) to be paid in the manner recorded therein. Over and above the amount of Rs. 5 crores agreed to be paid to the Defendant No. 1 by Defendant Nos. 4 to 6, since Defendant No. 1 occupied an area of about 200 sq.ft. on the first floor of one of the buildings on the Suit Property, Defendant Nos. 4 to 6 also agreed to provide an equivalent area to Defendant No. 1 in the redeveloped building on ownership basis. Under the said MoU dated 28th September, 2012, Defendant No. 1 also agreed to get his dispute settled with his brother Mr. Navnit Karsandas Mehta and cause the development rights to be transferred and/or assigned in favour of Defendant Nos. 4 to 6. Upon execution of the said MoU dated 28th September, 2012, a further sum of Rs. 15,00,000/- was paid by Defendant Nos. 4 to 6 to Defendant No.1. Therefore, Defendant Nos. 4 to 6 paid an aggregate amount of Rs. 51,00,000/- to the Defendant No.1.

2.7 In the year 2006, the Plaintiffs had approached the said Navnit Karsandas Mehta, who agreed to transfer, and in fact transferred his 50 per cent undivided

share, right, title and interest in the Suit Property in favour of the Plaintiffs vide a Deed of Conveyance dated 4th November, 2006. However, the said conveyance was not registered. The Plaintiffs had paid a sum of Rs. 56,50,000/- to the said Navnit Mehta. The said Navnit Mehta passed away in or about 8th November, 2013, leaving behind his legal heirs i.e. Mrs. Pravina Navnit Mehta (Wife), Mr., Vipul Navnit Mehta (son) and Mrs. Mamta Mahendra Rathod (married daughter). There were certain disputes between the Plaintiffs and the legal heirs of Navnit Mehta as they refused to execute or register the Deed of Conveyance. The disputes were referred to arbitration and the same were settled by the parties. Consent Terms were executed by the parties and the Learned Arbitrator was pleased to pass an Award in terms of the Consent Terms dated 23rd December, 2013. The Plaintiffs paid an additional amount of Rs. 75,00,000/- to the legal heirs of Navnit Mehta which is recorded in the Consent Terms/Award. The Plaintiffs therefore paid an aggregate amount of Rs. 1,31,50,000/- to acquire the 50 per cent undivided share right title and interest of Navnit Mehta. Neither the said Deed of Conveyance dated 4th November, 2006, nor the Consent Award dated 23rd August, 2013, have been challenged till date by the Defendant No.1.

2.8 Thereafter the Plaintiffs and Defendant Nos. 4 to 6 entered into negotiations, whereby Defendant Nos. 4 to 6 in the month of June, 2014, assigned and transferred all their respective rights, title and interest in the first MoU and the second MoU in favour of the Plaintiffs, on the terms, conditions and for the consideration of Rs. 60,00,000/- paid by the Plaintiffs to Defendant Nos. 4 to 6. The second MoU has not been terminated till date by the Defendant No.1.

2.9 The Plaintiffs thereafter made a request to Defendant No. 1 to grant development rights of his 50 per cent undivided share, right, title and interest in the Suit Property. The Defendant No. 1 was also informed by the Plaintiffs that they are ready and willing to comply with their part of the obligation under the second MoU. Since the Defendant No. 1 did not respond to the request of the Plaintiffs, the Plaintiffs through its Advocates' letter dated 19th July, 2015, called upon Defendant No.1 and Defendant Nos. 4 to 6 to comply with their obligations under the MoUs, failing which the Plaintiffs would be constrained to initiate legal action. The Defendant No. 1 through his Advocates' letter dated 22nd September, 2015 declined to comply with the obligations under the MoU on the ground/allegations set out therein. The Plaintiffs through their Advocates' letter

dated 19th October, 2015, inter alia, refuted the allegations made by the Defendant No.1.

2.10 The structures on the suit plot occupied by the tenants, being in absolute dilapidated condition, the Municipal Corporation of Gr. Mumbai ('MCGM') served a Notice dated 3rd June, 2009 under Section 354 of the Mumbai Municipal Corporation Act ('MMC Act'). By the said Notice, the first floor of the building named "Janjira Chawl" was to be pulled down and the ground floor was allowed to be retained with proper propping. A subsequent Notice dated 15th June, 2013 was issued by the MCGM under Section 354 of the MCGM Act calling upon the Defendant No. 1 to vacate the entire building and pull it down. Defendant No. 1 has not challenged the Notices, but has in fact accepted the contents of the said Notices and has filed Municipal Application No. 18 of 2014 before the Small Causes Court at Mumbai, for eviction of tenants in the chawl, for complying with the said Notices issued by the Corporation. In the said Application No. 18 of 2014, Defendant No. 1 has admittedly not mentioned anything about the Agreement dated 28th September, 2012 executed by him for redevelopment of the Suit Property.

2.11 Since the Defendant No. 1 did not agree to comply with the second MoU dated 28th September, 2012, executed by him with Defendant Nos. 4 to 6, which

was assigned by the said Defendant Nos. 4 to 6 in favour of the Plaintiffs, and also since Defendant No. 1 refused to redevelop the suit property along with the Plaintiffs - co-owners, the Plaintiffs filed the present Suit seeking the above reliefs, and filed the above Notice of Motion for ad-interim/interim reliefs. At the ad-interim stage, this Court by its Order dated 18th November, 2015, directed the Plaintiffs to deposit in this Court an amount of Rs. 4,50,00,000/- within a period of two weeks from the date of the said Order, and subject to such deposit restrained the Defendant No. 1 from creating any third party rights in respect of his 50 per cent undivided right in the Suit Property. The Plaintiffs have accordingly deposited the entire amount of Rs. 4,50,00,000/- in Court.

2.12 The Notice of Motion is now taken up for final hearing.

3. The Learned Senior Advocate appearing for the Plaintiffs has made the following submissions:

3.1 That admittedly Defendant No. 1 has only 50 per cent undivided share, right, title and interest in the Suit Property. The Plaintiffs have purchased the balance 50 per cent undivided share, right, title and interest in the Suit Property from late Navnit Mehta vide Deed of Conveyance dated 4th November, 2006, subsequently confirmed after his death by his legal heirs by executing the Consent Terms dated 23rd December, 2013. The Plaintiffs are

therefore the co-owners having 50 per cent undivided share, right, title and interest in the Suit Property. The Defendant No. 1 has not challenged the said Deed of Conveyance and in any event has no locus to challenge the same.

3.2 That Defendant No. 1 executed an MoU dated 28th September, 2012 in which he had granted the development rights of the Suit Property to Defendant Nos. 4 to 6. The Defendant No. 1 has been paid an aggregate amount of Rs. 51,00,000/- by the Defendant Nos. 4 to 6. Vide Deed of Assignment dated June 2014, Defendant Nos. 4 to 6 have assigned all their right, title and interest under the said Agreement dated 28th September, 2012 to the Plaintiffs, and the Plaintiffs have paid a sum of Rs. 60,00,000/- to the Defendant Nos. 4 to 6.

3.3 That the said assignment is valid as the MoU dated 28th September, 2012 permitted assignment of the rights of Defendant Nos. 4 to 6. There is no restrictive clause in the MoU dated 28th September, 2012, wherein the Defendant Nos. 4 to 6 are restrained from assigning their rights under the said MoU. On the contrary, the MoU contemplates that there may be assigns.

3.4 That the Agreement for grant of development rights dated 28th September, 2012, has not been terminated till date by the Defendant No. 1 and is valid and subsisting. The Defendant No. 1 has not challenged in any independent proceedings filed by him, the assignment in favour of the Plaintiffs,

despite being aware of the same at least since 29th July, 2015. The Plaintiffs are therefore entitled to develop the property not only as 50 per cent co-owners of the Suit Property but also under the rights acquired by them under the MoU dated 28th September, 2012.

3.5 That the Defendant No. 1 resides in a 200 sq.ft. room in one of the buildings in the Suit Property. Defendant No. 1 has no right subsisting in the Suit Property other than to receive the balance consideration under the said Agreement dated 28th September, 2012, being Rs. 4,50,00,000/- (which amount has been deposited by the Plaintiff in this Court pursuant to an ad-interim Order dated 18th December, 2015) and alternate accommodation equivalent to the area being occupied by him viz. 200 sq. ft. The Defendant No. 1 has already received a sum of Rs. 51,00,000/- from Defendant Nos. 4 to 6 under the MoU executed between them.

3.6 That both the buildings viz. Janjira Chawl which is over 100 years old, and Janjira Building which is over 50 years old, are occupied by tenants and both the said buildings are in a dilapidated condition., as can be seen from the Report dated 11th February, 2016 of Consulting Engineers, and Report dated 10th February, 2016 of the Architect, produced by the Plaintiffs at Exhibits J-2 and J-3

of the Plaint. The photographs submitted by the Plaintiffs clearly shows the dilapidated state of the said two Buildings.

3.7 That the notice dated 3rd June, 2009 was issued by the MCGM under Section 354 of the MCGM Act taking notice of the dilapidated condition of Janjira chawl and calling upon Defendant No. 1 to pull down the first floor of the building and retain the ground floor with additional support. No action was taken by the Defendant No. 1 in respect of the said notice because of which a subsequent notice dated 15th June, 2013 was issued by the MCGM under Section 354 of the MCGM Act calling upon the Defendant No. 1 to vacate the entire building and pull it down.

3.8 That the Defendant No. 1 accepted the contents of the said notices and filed Municipal Application No. 18 of 2014 before the Small Causes Court for eviction of tenants in the said chawl, which is pending as on date. The Application of the Defendant No. 1 proceeds on the basis that the said notices are required to be complied with thereby implying that the said chawl is admittedly in a dilapidated condition.

3.9 That the Defendant No. 1 has not produced any report before this Court to show that the building can be repaired, despite having filed three affidavits in this Court. In fact, Defendant No. 1 has no means to repair the

buildings but is raising the contention that the buildings can be repaired as a mere ruse to prevent grant of interim reliefs thereby jeopardising the lives of the occupants and passers by. The defendant No. 1 has no monies to carry out the work of redevelopment.

3.10 That the Defendant No. 1 has failed to take steps to repair and maintain the buildings resulting in the buildings becoming inhabitable and dangerous to the occupants residing therein as well as posing a threat to the passers-by. He is also financially not in a position to redevelop the same. As co-owners of the Suit Property, the Plaintiffs are liable for the safety of the occupants in the said two Buildings.

3.11 That the Defendant No. 1 has no locus to object to the Plaintiffs' case for redevelopment of the suit building. He has entered into an agreement for redevelopment of the Suit Property, which is valid, binding and subsisting, and has thus divested himself of any rights in the Suit Property, other than to receive in the newly constructed building an area equivalent to that which is presently in his possession i.e. 200 sq.ft. As a co-owner as well, he is liable to re-house the tenants upon demolition of the suit buildings.

3.12 That the Plaintiffs are ready and willing to develop the Suit Property and have deposited a sum of Rs. 4.50 crores in Court as directed by an Order

dated 18th December, 2015, which is the maximum monetary consideration the Defendant No. 1 may be entitled to. The Defendant No. 1 has already received a sum aggregating to Rs. 51,00,000/- from Defendant Nos. 4 to 6 under the two MoUs dated 28th August, 2012 and 28th September, 2012. The Plaintiffs are also willing to reserve premises in the redeveloped building admeasuring 200 sq.ft. which is the area currently occupied by Defendant No.1. 31 tenants out of 37 tenants have granted consent in favour of the Plaintiffs to carry out the work of redevelopment. 4 tenants are not residing in their tenements and therefore their consent could not and cannot be obtained. One premise is in possession of Defendant No.1. Therefore 80 per cent of the tenants have granted consent in favour of the Plaintiffs to redevelop the Suit Property.

3.13 That in the alternative, the Plaintiffs are also willing to redevelop the Suit Property as agent of the Court Receiver by maintaining accounts and paying over to the Defendant, the 50 per cent share of net profit upon sale of premises, over and above that which is required to be handed over to the tenants, after deducting the expenses/costs for the construction, including the purchase of TDR, FSI – MCGM deposit, rent to the tenants, etc. However, in such a case, the amount of Rs. 4,50,00,000/- deposited in this Court ought to be refunded

to the Plaintiffs as the Defendant No. 1 cannot have the benefit of both the amounts.

3.14 That this Hon'ble Court has in the past in similar cases granted relief of redevelopment at interim stages, as can be seen from the Judgments of the Division Bench of this Court in the case of *Man Chandak Developers Pvt. Ltd. vs. Mr. Dilip Mangalal Jain* dated 18th December, 2013 and the Judgment of a learned Single Judge of this Court in the case of *Trinity Properties Venture (India) Pvt. Ltd. vs. Abhimanyu Dattatray Wandrekar* dated 5th March, 2015.

3.15 That therefore the Plaintiff is entitled to redevelop the property and considering the ruinous condition and the Section 354 Notice that has been issued by the MCGM, it is imperative that even at the interim stage the Plaintiffs be permitted to redevelop the Suit Property especially considering the fact that more than 80 per cent of the tenants are also agreeable and have given their consent to the redevelopment.

4. Notice of Motion No. 136 of 2016 is taken out by some of the tenants on the Suit Property. By the said Motion, the said tenants seek directions that the Plaintiffs be allowed to carry out the work of redevelopment; for a direction that the Plaintiffs be directed to enter into an agreement for permanent alternate accommodation, and for other reliefs.

4.1 The Learned Advocate appearing for the tenants has reiterated the submission advanced on behalf of the Plaintiffs that the structures standing on the property are very old and are in dangerous and dilapidated condition. The Municipal Corporation of Greater Mumbai has already issued Notices under Section 354 of the Act. With the passage of time, the condition of the structures have worsened as there are no repairs carried out by Defendant No.1. In fact, on 16th February, 2016, a portion of the roof collapsed in Room No. 7 on the first floor of Janjira Chawl. The Learned Advocate appearing for the tenants also produced photographs showing the dilapidated and ruinous condition of the said Chawl. He submitted that it was of utmost importance that the lives of the tenants should not be put at risk and that the property be redeveloped as expeditiously as possible.

4.2. It is further submitted on behalf of the tenants that it appears that what the Defendant No. 1 is trying to do is to let the building fall and thereby get rid of the tenants. This is established from the fact that the Defendant No.1 has filed an application being Application No. 18 of 2014 in the Hon'ble Small Causes Court inter alia to the effect that the tenants have not complied with the notice and sought direction for eviction of the tenants from the structures. In the

said Application, Defendant No. 1 has intentionally not disclosed that he had entered into an agreement for redevelopment of the Suit Property, since he first wants the tenants to be evicted so that he is not required to give alternate accommodation to the tenants and usurp the area of the tenants for his own benefit. It is submitted on behalf of the tenants that at that stage the tenants objected to vacating the structures and were seeking repairs of the building because there was no redevelopment agreement disclosed to them, and also because they belong to the poor strata of Society, without any other roof over their heads, and over that of their family members, including their small children. It is further submitted on behalf of the tenants that the Plaintiffs who are also the co-owners are interested in redeveloping the Suit Property and to provide permanent alternate accommodation to the tenants. The tenants had several meetings with the Plaintiffs and they are ready and willing to extend all cooperation to the Plaintiffs for redevelopment of the Suit Property. 31 out of 37 tenants have consented for redevelopment through the Plaintiffs. Defendant No. 1 is residing in a single room admeasuring 200 sq.ft. Four tenants are not residing in the Suit Property. More than 80 per cent of the tenants have consented for redevelopment of the Suit Property. It is therefore submitted that this Court should intervene at the interim stage and save the lives and property of

the tenants by allowing the Plaintiffs to redevelop the property and hand over permanent alternate accommodation to the tenants.

5. The Learned Advocate appearing for Defendant No.1 has submitted as follows:

5.1 That the Suit Agreement i.e. MoU dated 28th September, 2012, is incapable of being specifically performed as there is no privity of contract between the Plaintiffs and Defendant No.1. In this regard, no permission was obtained before execution of the alleged Deed of Assignment, allegedly executed between Defendant Nos. 4 to 6 in favour of the Plaintiffs, nor the Defendant No. 1 was even informed by Defendant Nos. 4 to 6 that they intend to assign or transfer their alleged rights under the said MoU to any third party.

5.2 That the Notice dated 3rd June, 2009 issued by MCGM pertains only to Janjira Chawl and not Janjira House, and under the said Notice, the Plaintiffs were directed to pull down the first floor structure and retain the ground floor structure with proper propping.

5.3 That the Suit Building can be repaired. The MCGM issued one more Notice under Section 354 of the Act in the year 2013. On receipt of the said Notice, the tenants of the Suit Property filed Suit in the Bombay City Civil Court at Mumbai being L.C. Suit No. 3614 of 2013 challenging the said Notice

received under Section 354 of the MMC Act stating therein that the Suit Building can be repaired. Now the Plaintiffs and tenants are taking contrary stands in the present Suit that the said Suit Building cannot be repaired and is required to be redeveloped. In the said LC Suit No. 3614 of 2013, the City Civil Court has on 30th September, 2013, granted ad-interim relief in terms of prayer clauses (a) and (b) of the Notice of Motion, with a further direction to consider the structural report submitted by the tenants seeking permission to carry out repair work of the Suit Building.

5.4 That the Defendant No. 1 was constrained/compelled to file the Municipal Application No. 18 of 2014 under Section 505 of the MMC Act for compliance of the said Notice issued under Section 354 of the MMC Act, against the tenants of Janjira Chawl, only as the MCGM initiated criminal prosecution against the Defendant No. 1 before the 42nd Metropolitan Magistrate's Court at Dadar, Mumbai, for not complying with the requisitions contained in the Notice issued by MCGM under Section 354 of the MMC Act. The Defendant No. 1 also relied upon the written statement filed by the tenants that the buildings can be repaired.

5.5 That the Defendant No. 1 has disputed the title of the Plaintiffs as the co-owners and challenged the Mutation Entry Order of recording the Plaintiffs'

name in the Property Register Card by filing Writ Petition No. 7537 of 2015 in this Court, which is pending.

6. The aforesaid were the only points urged by the Learned Advocate for Defendant No. 1 when the matter was heard. The parties were directed to file their written submissions only on the points that were orally argued. The Defendant No. 1 has, however, contrary to the directions given, also sought to raise other grounds that were not orally argued. In order not to leave any cause for grievance, I have dealt with even the said contentions that were not orally argued. The additional grounds that are raised in the written submissions are as follows:

(i) The said Agreement/MoU dated 28th September, 2012, was not a final document and the negotiations were to be finalized, hence the Defendant Nos. 4 to 6 were not entitled to assign or transfer their alleged rights under the said MoU to any third party.

(ii) That the said MoU has already come to an end and is withdrawn, as no probate was obtained by the Defendant No. 1 within one year from the date of MoU as per Clause 5 of the said MoU dated 28th September, 2012. In view thereof, no relief can follow.

(iii) that the MoU dated 28th September 2012 is not a duly stamped and registered agreement.

7. I have considered the submissions advanced by the learned Advocates appearing for the parties, the written submissions filed by them and the case law relied upon by the Senior Advocate appearing for the Plaintiffs.

8. Admittedly both Navnit Mehta and Defendant No. 1 (being step brothers) had inherited the Suit Property equally under the last Will and Testament dated 10th January, 1998 of their father, the late Karsandas Mehta, who passed away on 10th January, 2003, and who was the owner of the Larger Property. It is the case of Defendant No. 1 himself that he is a 50 per cent co-owner of the Suit Property. The Plaintiffs have purchased 50 per cent share in the property from the brother of Defendant No. 1 Navnit Mehta (now deceased) vide Deed of Conveyance dated 4th November, 2006. The Deed of Conveyance was subsequently confirmed by the legal heirs of the said Navnit Mehta in the Consent Terms dated 23rd December, 2013, arrived at between the legal heirs and the Plaintiffs in arbitration proceedings. The Plaintiffs have paid Rs. 1,31,50,000/- for acquiring the said rights. The Defendant No. 1 has not filed a Civil Suit in the Court of competent jurisdiction challenging the said Deed of

Conveyance in favour of the Plaintiffs. Instead, Defendant No. 1 has sought to contend that he has challenged the title of the Plaintiffs before the City Survey Officer, and the order passed by the City Survey Officer is challenged by him by filing Writ Petition No. 7537 of 2015 in this Court, which is pending. In my view, merely challenging the order of City Survey Officer in the Writ Petition, cannot constitute a challenge to the Plaintiffs title to the Suit Property. The Plaintiffs have established that they are the co-owners of the Suit Property along with Defendant No.1 and therefore have a prima facie entitlement to redevelop the Suit Property.

9. Again, the Plaintiffs are also entitled to development rights of the entire Suit Property including Defendant No.1's share in the Suit Property as assigns of Defendant Nos. 4 to 6 who had entered into an Agreement dated 28th September, 2012 with Defendant No. 1 for grant of development rights for the entire property. The Defendant No.1's challenge to the assignment by Defendant Nos.4 to 6 in favour of the Plaintiff, on the ground that he has not consented to the same is misconceived. The Agreement dated 28th September, 2012 included permitted assigns of Defendant Nos.4 to 6. The term "permitted" does not mean as permitted by Defendant No.1, but rather as permitted by law. If the Defendant No.1 did not wish to permit any assignment by the Defendant

Nos.4 to 6 then the Agreement would have specifically prohibited the same. There is no clause prohibiting such assignment, nor any clause which requires the express consent of the Defendant No.1. The Plaintiffs have paid the entire consideration of Rs. 60,00,000/- under the said Assignment Agreement to the Defendant Nos. 4 to 6. As set out above, the only surviving rights of the Defendant No.1 is merely to receive the balance consideration (which is already deposited in Court) and to receive 200 sq.ft. in the newly constructed building. The Plaintiffs are willing to undertake to provide the same. In any event, the Defendant No.1 at least since 19 July, 2015 (Exhibit F, page 55 to the Plaint) has full knowledge of the assignment to the Plaintiff, but has taken no steps to challenge the same. The reasons for the opposition by Defendant No.1 are obvious.

10. The Defendant No. 1 has also contended that the MoU is not a final document. The law is well settled that even if a particular agreement/document contemplates the execution of another formal document at a later date, it does not mean that the former agreement/document is not a concluded contract, and is not capable of being enforced. Further, as can be seen, the MoU is exhaustive and as such covers all material terms between the parties. The Defendant No. 1 has not disclosed as to which are the terms not incorporated under the MoU and

there is not a single letter from the Defendant No.1 in that regard. The Defendant's said contention is therefore without any substance. The Defendant has further sought to contend that the agreement is not duly stamped and registered. The said argument is not sustainable as this Court has held in the case of Marine Container Services vs Rajesh Vora reported in 2001 4 MhLJ 353, that at the interim stage the court ***“cannot decline interim relief or Court cannot at the stage of considering the application for interim relief be stopped in its track and unless it first considers the question whether the document is sufficiently stamped or not.”***

That being so, at the interim stage this is not an objection which would disentitle the Plaintiff from interlocutory relief. Further the issue that since probate has not been obtained, it would tantamount to automatic termination of the Agreement, is also misconceived. The Agreement does not postulate such a situation. Further that would tantamount to the Defendant No.1 taking advantage of his own wrong. The said defence is also therefore misconceived.

11. It is true that the Defendant No. 1 is the co-owner of the Suit Property. He resides in a 200 sq.ft. room in one of the buildings in the Suit Property. Under the said Agreement dated 28th September, 2012, the Defendant No. 1 has no rights subsisting in the Suit Property, other than to receive the balance

consideration being Rs. 4.50 crores (which amount has been deposited by the Plaintiffs in this Court pursuant to an ad-interim order dated 18th December, 2015) and an alternate accommodation equivalent to the area being occupied by him viz. 200 sq.ft. Defendant No. 1 has also received a sum of Rs. 51,00,000/- from Defendant Nos. 4 to 6 under two MoUs executed between them.

12. The issue therefore before this Court is as to whether the Plaintiffs being co-owner of the 50 per cent of the undivided share, right, title and interest in the plot of land and/or also being entitled to development rights of the entire Suit Property in view of the MoU dated 28th September, 2012, is at the interim stage entitled to be allowed to redevelop the Suit Property. My answer to the same is in the affirmative for the reasons set out hereunder:

(i) The Suit Property has two structures thereon. A chawl building namely Janjira Chawl, which is over 100 years old, and which is occupied by 20 tenants; and another building (Janjira Building) which is over 50 years old and is occupied by 17 tenants.

(ii) From the Reports dated 11th February, 2016 of the Consulting Engineers and 10th February, 2016 of the Architect, both Reports being submitted on behalf of the Plaintiffs, it becomes clear that both the experts have opined that it is not

feasible to repair the two buildings and it would be better to reconstruct the said buildings.

(iii) The photographs showing the current status of the property are tendered during the hearing. Several photographs are also annexed and marked Exhibit-B to the Plaintiffs' Affidavit-in-Rejoinder dated 17th December, 2015. All these photographs clearly show the dilapidated state of the two buildings.

(iv) In fact, on 16th February, 2016, a portion of the roof collapsed in Room No. 7 on the first floor of Janjira Chawl. The Occupant of the said room, a Senior Citizen -- Mrs. Sheetal Sudhir Ranade, appeared before this Court on 3rd March, 2016 and urged the Court to pass orders permitting the redevelopment of the property, since the building in which she was residing was in a dilapidated condition and unfit for residence. The status of the building was also confirmed by another tenant of the chawl, Mr. Gokaldas Somaiyaa, who is a 78 year old senior citizen.

(v) The Notice dated 3rd June, 2009 was issued by the MCGM under Section 354 of the MMC Act, taking notice of the dilapidated condition of Janjira Chawl and calling upon the Defendant No. 1 to pull down the first floor of the building and retain the ground floor with additional support. No action was taken by the Defendant No. 1 in respect of the said Notice. Subsequent Notice dated 15th

June, 2013, was issued by the MCGM under Section 354 of the MMC Act calling upon the Defendant No. 1 to vacate the entire building and pull it down. Therefore the Defendant No. 1 has since 2009, taken no steps to repair the chawl building, despite notices from MCGM, though an oral submission was made in Court that he has the necessary funds to do so. No documents have been produced to show such ability, nor were any reports produced to bear out the said contention. However, what is relevant is the fact that Defendant No. 1 has accepted the contents of the said Notices and has filed Municipal Application No. 18 of 2014 before the Small Causes Court for eviction of the tenants in the Chawl, which Application is pending as on date. The Application proceeds on the basis that the said Notices are required to be complied with, thereby implying that the said Chawl is in fact in a dilapidated condition, and is not in repairable condition.

(vi) It is true that the tenants had approached the City Civil Court and had contended that the buildings could be repaired. The tenants are admittedly from the weaker section of the society who were unable to provide a roof over their heads and to the members of their families. As explained by them, at that point of time, there was no talk between them and the Defendant No. 1 qua the redevelopment of the property. Though Defendant No. 1 had already entered

into a redevelopment agreement, he had suppressed the fact from the tenants who therefore had no alternative but to stall the demolition and prevent themselves from being on the streets alongwith their family members.

(vii) It is pertinent to note that no disclosure was made in the said application of any reports obtained by Defendant No. 1 which purportedly showed that the building could be repaired. Though Defendant No. 1 had across the bar contended that he had a report which showed that the building could be repaired, no such report was produced even before this Court.

(viii) The Plaintiff has demonstrated its readiness and willingness to develop the Suit Property by depositing, pursuant to the Order dated 18th December, 2015, a sum of Rs. 4.50 crores, which is the maximum monetary consideration, the Defendant No. 1 may be entitled to, and the Plaintiff is also willing to reserve premises in the redeveloped building admeasuring 200 sq.ft. which is the area currently occupied by Defendant No. 1. The Defendant No. 1 has already received a sum aggregating to Rs. 51,00,000/- from Defendant Nos. 4 to 6 under the two MoUs dated 28th August, 2012 and 28th September, 2012.

(ix) Significantly, 31 of 37 (over 80%) Occupants of the Buildings have given their consent for the redevelopment of the buildings by the Plaintiff (see consent letters at Exhibit J-1 at 69E to 69J to the Plaintiff). Of the balance 6 Occupants, 4 do not reside in the said buildings and hence it is not possible to obtain their consent. The balance 1 room is occupied by the Defendant No.1. Thus, the Plaintiff virtually has consent of all the persons presently occupying the Suit Buildings. The tenants have also taken out Notice of Motion No.136 of 2016 supporting the Plaintiffs for redevelopment through the Plaintiffs.

(x). Prima facie, the Defendant No.1 cannot be allowed to object to the Plaintiff's case for redevelopment of the Suit Building. He has himself entered into an agreement for redevelopment of the Suit Property, which is valid, binding and subsisting. There is no case at all on record that Defendant No. 1 has either terminated the agreement or has any case for termination of the agreement. Thus, Defendant No.1 has effectively divested himself of any rights in the said property, other than to receive in the newly constructed building, an area equivalent to that presently in his possession i.e. 200 sq.ft. As a co-owner as well, he is liable to re-house the tenants upon demolition of the Suit Buildings.

13. As pointed out by the Plaintiffs, this Court has in the past in similar cases granted the relief of redevelopment at the interim stages i.e. in the case of *Man Chandak Developers Pvt. Ltd. vs. Mr. Dilip Mangalal Jain* (supra) and *Trinity Properties Venture (India) Pvt. Ltd. vs. Abhimanyu Dattatray Wandrekar* (supra). Paragraphs 5, 7 and 8 of the decision in *Trinity Properties Venture (India) Pvt. Ltd. vs. Abhimanyu Dattatray Wanbdrekar* (supra) are reproduced hereinbelow:

"5. A cumulative effect of all these circumstances, staring as they are in the face of the Defendant, is that the Plaintiff has made out a prima facie case of their being an oral agreement for sale of 8.33% undivided share of the Defendant in the Suit Property to the Plaintiff. The question now is whether the interim relief prayed for by the Plaintiff, and in the terms in which such relief is prayed, ought to be granted, considering the nature and circumstances of the case as also the balance of convenience as between the parties. It is an admitted position that as far back as in March 2013, there is a demolition notice issued by the Municipal Corporation to the Plaintiff for demolition of the structure standing in the Suit Property. The basis of a notice under Section 354 is that the structure is in such ruinous condition or is so dangerous to persons occupying, resorting to or passing by the structure or other structures in the neighbourhood, that the Corporation requires the owner or occupier of the structure to

pull down the structure so as to prevent all cause of danger. The notice itself is not contested by the Defendant. Though learned Counsel for the Defendant submitted at the bar that the Defendant did not accept the fact that conditions stipulated under Section 354 actually obtain at the site and might still pursue his remedy in respect of the notice, the fact of the matter is that for the last about one year he has not chosen to do so. The Municipal Corporation's notice, uncontested as it is, clearly implies that the structure is in a ruinous and dangerous condition. Besides the Plaintiff has annexed to the affidavit in support of the Notice of Motion photographs of the structure, which again are not contested by the Defendant, which show that the structure is indeed in a dilapidated condition and urgently requires to be pulled down. If that is so, and the Plaintiff is legally bound to do so, there is no way that the Defendant, even though he contests the agreement purportedly entered into by him with the Plaintiff for sale of his undivided share of the Suit Property, can prevent the Plaintiff from pulling down the structure. As I have noted above, there is already an overwhelming prima facie case in favour of the Plaintiff that there was an oral agreement between the parties but even in the absence of such agreement, the Plaintiff's demolition of the Suit Property cannot be interfered with by the Defendant.

7. As for the balance of convenience, it is very clear that even if one were to disregard the agreement for sale purportedly entered

into by the Defendant in respect of his 8.33% undivided share in the Suit Property, the Plaintiff admittedly owns 91.67% of undivided share in the Suit Property. As owner of the Suit Property, if the Plaintiff were to assert its rights in respect of the Suit Property and even if there were to be a partition as between the Plaintiff and the Defendant, all that the Defendant might expect the Court to do is to permit the Plaintiff to buy out the Defendant. The Defendant being 8.33% cosharer of the Suit Property, as against the Plaintiff's 91.67% share, it is but reasonable to expect the Court to allow the Plaintiff to purchase the moiety of the Defendant in the Suit Property. The only question in that case would be to determine the reasonable compensation that the Defendant ought to get. The price determined by the Wandrekars to be payable to each of the family members under the oral agreement, which has, as noted above, since been acted upon by execution of conveyance, can be treated as a proper and reasonable price of the Defendant's share, at least for the purposes of the present interim application. In that view of the matter, if the Defendant's share in the Suit Property is secured to the extent of its entire value, there is no reason why this Court ought to permit the Defendant to interfere with the demolition of the dangerous structure in the Suit Property and construction of a new structure in its place by the Plaintiff.

8. In that view of the matter, the Plaintiff has made out not only a strong prima facie case but a clear balance of convenience in its favour for grant of the interim relief claimed, on deposit of the

value of the Defendant's share in the property in Court. Accordingly, the Notice of Motion is made absolute in terms of prayer clauses (a), (b) and (c) subject to the Plaintiff depositing a sum of Rs.1.75 crores in this Court within a period of four weeks from today.. There shall be no order as to costs."

14. The balance of convenience is completely in favour of the Plaintiffs and the tenants who are senior citizens, and who have appeared before this Court and expressed their fear of suffering grave injury and/or loss of life considering the condition in which they are living.

15. The Plaintiffs have in the alternative submitted that they are also willing to redevelop the Suit Property as agent of the Receiver by maintaining accounts and paying over to the Defendants the 50 per cent share of net profit upon sale of the premises, over and above what is required to be handed over to the tenants, after deducting the expenses/costs for the construction, including the purchase of TDR, FSI-MCGM deposit, rent to the tenants, etc. It is submitted that in such case the amount of Rs. 4.5 crores deposited in this Court ought to be refunded to the Plaintiffs as the Defendant No. 1 cannot have the benefit of both the amounts. Though it is true that Defendant No. 1 cannot have the benefit of both the amounts, whilst the amount of Rs. 4.5 crores shall continue to stand deposited in Court, the Court shall whilst passing its order also have to keep in

mind that in the event of the Court reaching a conclusion at the final hearing of the Suit that the MoU dated 28th September, 2012 executed by and between Defendant No.1 and Defendant Nos. 4 to 6, and its assignment by Defendant Nos. 4 to 6 in favour of the Plaintiffs is not binding on the Defendant No.1, the Plaintiffs should be ready to pay 50 per cent of the net profit made out of the redevelopment of the property for which the redevelopment process has to be completely transparent. Keeping that in mind I pass the following Order:

(i) The Court Receiver, High Court, Bombay, is appointed as Receiver in respect of the Suit Property. The Plaintiff shall carry out redevelopment of the Suit Property as agent of the Court Receiver. M/s. Shetgiri & Associates are appointed as Architects for the purpose of redevelopment of the Suit Property. The redevelopment work shall be carried out by the Plaintiff under the supervision of the Court Receiver and M/s. Shetgiri & Associates. The terms and conditions of redevelopment including appointment of contractors shall be vetted and approved by the Court Receiver and M/s. Shetgiri & Associates.

(ii) The price fixed for sale of the flats under the free sale category shall also be approved in the meeting/s to be held by and between the Plaintiffs, the Court

Receiver and the Architect appointed by this Court. Defendant No.1 shall be at liberty to attend all meeting(s) with the Court Receiver and the Architect.

(iii) The construction material shall be ordered and payments shall be made by Plaintiffs/Contractors only after obtaining approval from M/s.Shetgiri & Associates.

(iv) Monthly accounts shall be filed by the Plaintiffs with the Court Receiver.

(v) Notice of Motion is accordingly disposed off with no order as to costs.

(vi) Notice of Motion taken out by the tenants also stands disposed off.

(S.J. KATHAWALLA, J.)