

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4399 OF 2017

D B Realty Limited ...Petitioner

Versus

Mr.Satish Babu Aramalla & Ors. ...Respondents

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Mr. G.S.Godbole i/b. Negandhi Shah & Himayatullah for the Petitioner.
Mr.V.C.Muralidharan a/w Ms. Tripty M. Kapadia i/b. Joy Legal
Consultants for Respondent No.1.

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CORAM: Mrs.MRIDULA BHATKAR, J.
DATED : APRIL 17, 2017

P.C. :

1. This petition is directed against the order dated 8th February 2017 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Summons for Judgment No. 26 of 2014 in Summary Suit No. 80 of 2014 thereby granting conditional leave to defend the suit subject to payment of Rs. 46,69,000/- within six weeks from the order dated 8th February 2017. The plaintiff had filed the suit on the basis of a letter dated 2nd March 2011. The respondent i.e. original plaintiff has paid an amount of Rs. 46,69,000/- to the petitioner i.e. original defendant no.1 for construction of the flat.

2. The learned counsel for the petitioner submits that there is no contract between the two parties. However, it was to be executed between the parties under MOFA. He further submits that the learned trial Judge while passing the order has made observation that defendant no.1 has made out a case of good defence. He further submits that there is no admission of the liability on the part of defendant no.1 i.e. petitioner, though he has admitted the receipt of the amount. He further submits that receiving the amount and admitting the liability are two different things and the learned Judge has confused two concepts and granted leave with conditional order. He relies on the contents of the letter dated 2nd March 2011. He further submits that initially the respondent has paid Rs. 10 lakhs in March 2011 and he was supposed to pay remaining amount of Rs. 36,69,000/- on or before 5th March 2011 and also pay total amount of Rs. 2,33,45,000/- as further installments decided by the petitioner. The amount of Rs. 36,69,000/- was not paid on or before 5th March 2011 and therefore, it was not obligatory for the petitioner i.e. defendant no. 1 to return the said amount. It is arguable case for the petitioner on the point of repayment of money so also on the point of interest, as construction of the building was subject to various permissions of which the plaintiff was given complete idea and he had full knowledge. He submits that the order passed by the learned Judge

of the City Civil Court is to be stayed. He further submits that the Summary Suit is not maintainable as it is an investment and interest in the project.

3. The learned counsel for the respondents relies on the reply of the petitioner i.e. original defendant. In paragraph no. 5 of the reply, he is pointed out that the petitioner has accepted that the plaintiff had made free deposit of Rs. 46,69,000/- with defendant no.1 as per the writing viz. request for reservation dated 2nd March 2011.

4. Perused the order dated 8th February 2017 passed by the City Civil Court, Borivali, Mumbai and the impugned letter dated 2nd March 2011. On perusal of the letter, it is clear that original defendant no.1 is in business of construction and the original plaintiff i.e. respondent no.1 has booked a flat in his building well in advance. Though there is no contract under MOFA executed between the parties and therefore, Summary Suit has been filed on the basis of letter dated 2nd March 2011. The original plaintiff has paid Rs. 46,69,000/- to the petitioner which cannot be called as investment or interest free deposit, it is a price for the flat in the project of the petitioner. As it is shown that the booking amount was paid by the original plaintiff and the receipt of the said

amount issued by the defendant is accepted in the said letter, though it cannot be informed that the defendant had admitted the liability. The submission of the learned counsel that there is an acceptance of the receipt of the amount and the acceptance of liability cannot be appreciated as it is a change of nomenclature which can not affect the basic admission and money transaction between the parties. Due to certain circumstances, the defendant i.e. petitioner might not have been started the scheme. However, the defendant i.e. petitioner has received the amount from the original plaintiff. The observation made by the learned trial Judge while granting conditional leave to defendant cannot be faulted with. The petitioner is directed to deposit an amount of Rs. 23,34,500/- within a period of two weeks and thereafter the balance amount of Rs. 23,34,500/- be deposited within a period of four weeks from the date of this order. Hence, Writ Petition is dismissed accordingly.

(MRIDULA BHATKAR, J.)