

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST NO. 13569 OF 2017

Melstar Developers Pvt Ltd ...Appellant

Versus

Mohameed Mustakim Khan & Ors ...Respondents

AND

APPEAL FROM ORDER ST NO. 13558 OF 2017

Melstar Developers Pvt Ltd ...Appellant

Versus

Anees Ismail Shaikh & Ors ...Respondents

AND

APPEAL FROM ORDER ST NO. 13562 OF 2017

Melstar Developers Pvt Ltd ...Appellant

Versus

Vijay Shankar Kadam & Ors ...Respondents

AND

APPEAL FROM ORDER ST NO. 13566 OF 2017

Melstar Developers Pvt Ltd ...Appellant

Versus

Shrinivas Motilal Bhagat & Ors ...Respondents

AND

APPEAL FROM ORDER ST NO. 13572 OF 2017

Melstar Developers Pvt Ltd ...Appellant

Versus

Mohd Yonus Mohd Hussain Shaikh & Ors ...Respondents

Mr Chirag Mody, *with Nilesch Tated & Rushabh Parekh, i/b DSK
Legal, for the Appellant in all the matters.*

Mr Mahesh Menon, *for Respondent No. 1 in all the appeals.*

Mrs Asha Bhuta, *for Respondent No. 2 in all the appeals.*

CORAM: G.S. PATEL, J

DATED: 19th June 2017

PC:-

1. The Appeal is directed against an order dated 15th March 2017, by which the Plaintiff's Notice of Motion was disposed of. The Plaintiff is a firm of developers. The Defendant No. 2 claims to be a lessee of 2,730 sq mtrs of a property situated in Village Borla, Taluka Salsette in Thane Collectorate bearing Survey No. 5, Hissa No. 1 (Part) and 418 (Part) in the registration sub-district of Bandra. Defendant No. 1 is said to be occupying a shed admeasuring 150 sq ft. There are five separate actions and the 1st Defendant in each of them occupies a portion of the larger property. The larger property of 2,730 sq mtrs, and of which the 2nd Defendant claims to be a lessee, was itself part of a large tract of land admeasuring about 16,722 sq mtrs owned by Champaklal Vithalji Jani HUF.

2. I am not at this stage concerned with the merits of the rival claims. There is a long history of disputes and ultimately the Plaintiff, which claims to be the transferee of the entire 16,722 sq mtrs of land from Champaklal Vithalji Jani HUF, successfully negotiated a settlement with the 1st Defendant in each of these matters. The 1st Defendant and the Plaintiff sought to tender Consent Terms.

3. By the impugned order, the learned Judge concluded, in my view incorrectly, that the proposed Consent Terms adversely affect the rights of the 2nd Defendant and its claims to being a lessee of the area of 2,730 sq mtrs. For this reason, the learned Judge kept the Consent Terms “in abeyance”. From what is stated in paragraph 46 of the impugned order, I understand this to mean is that the learned Judge actually declined to make an order in terms of the Consent Terms and directed that the Suit proceed instead.

4. I have seen the Consent Terms myself and heard the Advocates for the Plaintiff, Defendant No. 1 and Defendant No. 2.

5. The only opposition comes from Defendant No. 2 who, as I noted, claims to be a lessee of 2,730 sq mtrs. What is of significance is that the 2nd Defendant has not filed any suit to establish the claim of being a lessee. Ms Bhuta for the 2nd Defendant attempts to point out that some clauses of the Consent Terms adversely affect the 2nd Defendant’s rights. For example, she points out that Clause 2(a) seems to accept that the 1st Defendant is in possession of some open space; this is denied by the 2nd Defendant. She also points to Clause 5 which says that the Plaintiff is entitled to have cancelled ‘any electricity meters’ installed on the suit property. Her submission is that there are no electricity meters installed in the 1st Defendant’s name but they are only in the 2nd Defendant’s name. It is possible that Clause 5 is not happily worded but this only requires some minor clarification or correction, and which I propose to do now in any case.

6. It is equally true that the 2nd Defendant's claim cannot be brushed aside, nor can it be compromised in any fashion by virtue of the Consent Terms between Defendant No. 1 and Plaintiff. It is always open to a Court considering an application for compromise under Order XXIII to direct other suitable corrections to the Consent Terms or to order those corrections itself.

7. Indeed before me there is no dispute that these Consent Terms are entirely without prejudice to the rights and contentions of the 2nd Defendant. In particular, it is accepted that Clause 5 and any other similar clauses relate to and are in the context of, and only of, the 1st Defendant; that is to say, the Plaintiff cannot by virtue of Clause 5 remove any electricity meter that stands in the name of the 2nd Defendant. All that the Plaintiff is entitled to do is *vis-à-vis* the 1st Defendant and not the 2nd Defendant. Similarly, the fact that between them the Plaintiff and the 1st Defendant speak of open space being occupied by the 1st Defendant does not mean and is not to be construed to mean that the 2nd Defendant has accepted this position.

8. In fact, it is only necessary to clarify that the Suit as between the Plaintiff and the 1st Defendant is compromised by virtue of these Consent Terms. These Consent Terms are not binding on the 2nd Defendant in any manner whatsoever. All rights and contentions of the 2nd Defendant are expressly kept open.

9. In this view of the matter as between the Plaintiff and the 1st Defendant the impugned order is set aside. The parties will appear

before the learned Judge on 10th July 2017 with an authenticated copy of this order.

10. The learned Judge will dispose of the Suit as between the Plaintiff and other Defendant. Whether or not the Plaintiff want to proceed against other Defendant is for the Plaintiff to decide. In other words, it is open to the Plaintiff to withdraw the Suit unconditionally against the 2nd Defendant.

11. In the meantime, the 2nd Defendant is fully at liberty to institute such proceedings as 2nd Defendant is advised to protect the 2nd Defendant's rights and interest in respect of the area of 2,730 sq mtrs.

12. All the Appeals from Order are disposed of with these observations and directions. There will be no order as to costs.

13. It is lastly clarified at the cost of repetition that in these Consent Terms where there is a reference to any item or object such as electricity meter, this is, by consent of Plaintiff and 1st Defendant, agreed to be a reference to only such items as are claimed by or are in the context of actions taken by the 1st Defendant. They do not relate to the 2nd Defendant.

(G. S. PATEL, J)