

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.145 OF 2017
WITH
CIVIL APPLICATION NO.189 OF 2017**

M/s.Gracia Developer LLP

... Appellant

Vs.

Shri Tushar Bhagwan Pamale

... Respondent

Mr.Sandesh D. Patil with Ms.Anusha Amin i/b Varsha Bhogle for the
Appellant

Ms.Yogita Deshmukh Chitnis for Respondent

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 3rd OCTOBER, 2017

P.C.:

1. This Appeal from Order is directed against the order dated 16.8.2016 passed by the learned Civil Judge Senior Division, Palghar, in application below exhibit 5 in Special Civil Suit No.27 of 2016. The present appellant / plaintiff i.e., the partnership firm, has filed a suit for specific performance and declaration and injunction against the respondent/defendant in respect of agreement of sale of the suit land. In the suit, an application for interim injunction was moved by the appellant against the defendant that the respondent/defendant has accepted Rs.11 lakhs as earnest money

out of the total consideration of Rs.1,50,00,000/-. A receipt to that effect was issued by the defendant in favour of the appellant – plaintiff. Thereafter it was found that the defendant was not ready and willing to perform his part of the contract in respect of the sale of the suit land and therefore, he filed the suit praying that the defendant shall not create any third party right in the suit land. The learned trial Judge has rejected the said application on the ground that the land at the relevant time did not stand in the name of the defendant / respondent and one Balkrishna Shinaware was the owner of the said land and he was not party to the suit. Hence, this Appeal from Order.

2. Learned Counsel for the respondent, at the outset, informs the Court that the respondent has already created a third party right in the suit property by entering into a registered development agreement dated 31.1.2017 with one Ghodela Properties.

3. In view of this statement of the learned Counsel for the respondent, the learned Counsel for the appellant seeks leave to withdraw this Appeal from Order as he wants to take out appropriate application and also to go for appropriate amendment.

4. Appeal from Order is accordingly allowed to be withdrawn and dismissed as such.
5. Civil Application also disposed of.

(MRIDULA BHATKAR, J.)