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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPELLATE DIVISION
COMMERCIAL APPEAL LODING NO. 14 OF 2017
IN
NOTICE OF MOTION NO. 70 OF 2016
IN
COMMERCIAL SUIT NO. 202 OF 2016

Mrs. Sarlaben R. Shah and ors.

.. Appellants

Versus

Sai Everest Builder and Developers and ors.

.. Respondents

Mr. Asad Bukhari for appellants.

Mr. Anil Kumar Patil for respondent nos.1 to 11.

CORAM: NARESH H. PATIL &
SMT. BHARATI H. DANGRE, JJ.

JULY 12, 2017.

P.C.

1. The impugned order passed by the learned Single Judge dated 27/2/2017 arises out of a Notice of Motion No. 70 of 2016 in Commercial Suit No. 202 of 2016. The learned counsel appearing for the respondents-plaintiff has placed on record a copy of the order dated 5/4/2017 passed by the learned Single Judge in Notice of Motion No. 70 of 20116, which reads as under :-

“1. Sarlaben Ramniklal Shah, Mr. Himanshu Ramniklal Shah, Mr. Paresh Ramniklal Shah and Mr. Manoj R. Shah are all present in Court today.

2. The parties have executed the necessary agreements. Nothing further survives in the Motion. The Motion is disposed of.

3. The contempt notice issue against Mr. Himanshu Shah is discharged. The Sua Moto Contempt Petition is also disposed of accordingly.

4. All concerned to act on an authenticated copy of this order.

5. Mr. Bukhari makes a statement that in view of this, the appeal filed by his client is infructuous and that he will make necessary application for withdrawal.”

2. Learned counsel for respondent submits that in view of the disposal of the Notice of Motion No. 70 of 2016, appropriate orders are required to be passed in this appeal.

3. Learned counsel for the appellants placed on record a simple copy of the order passed by the learned Single Judge on 29/3/2017 in Notice of Motion No. 70 of 2016. Para 4 of the said order reads as under :-

“4. Mr. Patil on instructions from Mr. Govind Patel, partner of the Petitioner, states that once the necessary documents are signed, since possession has been handed over, the Suit may be allowed to be withdrawn. Having regard to the past history of the Suit, when those Agreements are signed, I will permit this and I will, as an exceptional case, order that there be a complete refund of court fee in this matter.”

4. Learned counsel for the appellants submit that in the light of the subsequent development, the suit itself be disposed as withdrawn by the plaintiff. The counsel appearing for the respondent – plaintiff submits that plaintiff would press for some other claims in the suit.

5. Without expressing any opinion, we observe that the appellants would be at liberty to raise this issue before the learned Single Judge.

6. Learned counsel appearing for the appellants submits that post dated cheques are not received from the plaintiff in favour of the defendant – society. The learned counsel appearing for the plaintiff submits that after verifying the record within a week's time, the plaintiff will discharge his obligation.

7. Keeping all issues on merits open in the Suit, we dispose of the appeal in the light of the disposal of the Notice of Motion No. 70 of 2016 by the learned Single Judge.

(SMT. BHARATI H. DANGRE,J.)

(NARESH H. PATIL,J.)