

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO. 46 OF 2017
IN
NOTICE OF MOTION [L] NO. 832 OF 2016
IN
COMMERCIAL SUIT NO. 19 OF 2016
WITH
NOTICE OF MOTION NO. 9 OF 2016**

Dr. Dilipkumar Jagjivandas Raichura and ...Petitioners
another.

Versus

M/s. Right Channel Constructions and others ...Respondents

**WITH
COMMERCIAL APPEAL NO. 87 OF 2017
IN
NOTICE OF MOTION [L] NO. 832 OF 2016
IN
COMMERCIAL SUIT NO. 19 OF 2016
WITH
NOTICE OF MOTION NO. 12 OF 2017
IN
COMMERCIAL APPEAL NO. 46 OF 2017**

M/s. Right Channel Constructions and others Appellants

Versus

Dr. Dilipkumar Jagjivandas Raichura and ...Petitioners
another.

Mr. A.V. Anturkar, Sr. Advocate a/w Sheetal Shah i/b M/s.
Mehta & Girdharlal, for appellant in COMAP No. 46 of
2017.

Mr. Simil Purohit a/w Jayesh Mistry i/b RMG Law Associates
for appellants in COMAP No. 87 of 2017 and respondents
No. 1 to 5 in COMAP No. 46 of 2017.

Mr. Aditya Shiralkar, i/b Ashok Purohit & Co., for respondent
No.6 in COMAP No. 46 of 2017.

**CORAM: NARESH H. PATIL &
RAJESH G. KETKAR, JJ.**

DATED: 5th December, 2017.

PC:-

1. Heard Mr. Anturkar, learned Senior Counsel for the appellants in Commercial Appeal No. 46 of 2017, Mr. Purohit, learned Counsel for the appellants in Commercial Appeal No. 87 of 2017 and Mr. Aditya Shiralkar, learned Counsel for respondent No.6 in Commercial Appeal No. 46 of 2017.

2. Admit. By consent of the parties heard finally.

3. These two appeals arise out of the order passed by the learned Single Judge of this Court (Coram: S.J. Khathawalla, J.] on 5th April, 2016 in Notice of Motion (L) No. 832 of 2016 in Suit (L) No. 212 of 2016. Appellants in Appeal No. 46 of 2017 are the original plaintiffs and appellants in Appeal No. 87 of 2017 are the original defendants.

4. Mr. Purohit, learned Counsel submitted that the appellant is adversely affected due to the order passed by the learned Single Judge. It is the submission of the learned Counsel that appropriate reasoning in support of the order would have thrown light on the issues raised by the contesting parties and the submission advanced before the learned Single Judge. Learned Counsel referred to some of the clauses of the development agreement dated 14th October, 2010 and an agreement dated 27th March, 2010 which according to the learned Counsel is draft agreement. Controversy between the parties relates to the area. He submitted that the developer is

ready to hand over possession of constructed carpet area admeasuring 2338 square feet. Whereas, the plaintiff demands more area from the developer.

5. Learned Senior Counsel Mr. Anturkar submits that issues raised by the contesting parties in respect of clauses of various agreements, pleadings of the parties, plans sanctioned by the Corporation and facts and circumstances of the case are required to be gone into so as to arrive at a just conclusion in respect of the controversy at hand. Learned Counsel submits that there is sufficient record to show that the plaintiffs are entitled to more area than what the developer agrees to hand over.

6. Mr. Shiralkar, learned Counsel appearing for the Society submits that according to sanctioned plan area is to be allotted to respective members. Learned Counsel reserves his right to raise appropriate issues in regard to amount of Rs. 1,00,00,000/- (Rs. One Crore only) deposited by the developer with the Prothonotary and Senior Master of this Court.

7. To a limited extent, we perused the record and heard submissions of the learned Counsel appearing for the contesting parties. Impugned order by the learned Single Judge was passed on 5th April, 2016, near about one and half year ago. The parties are still litigating on the issue as to how much carpet area is to be allotted to the plaintiffs by the developer. It is informed that construction is going on. The plaintiffs desire to run Nursing Home at the subject premises and expect the developer to seek necessary sanction for starting Nursing Home. At this stage, Mr. Purohit submitted that developer would take necessary steps for getting appropriate sanction for running Nursing Home, in case area is

frozen or finally demarcated. This is the issue which is the bone of contention between the parties.

8. During the course of hearing, we find that issue is required to be addressed in detail by going through various documents, plans, pleadings and agreements. We are, therefore, of the view that it would be convenient, just and proper to request learned Single Judge to deal with these issues in Notice of Motion No. 832 of 2016 which is still pending on the file of this Court. We, therefore, grant liberty to the contesting parties to move the learned Single Judge for expeditious disposal of the Notice of Motion and for getting appropriate orders in the Notice of Motion for further modification of the order passed by the learned Single Judge, if any. In case the parties make a request, learned Single Judge to deal with the matter accordingly. It is clarified that we have not expressed opinion about the merits of the issues raised by the contesting parties. All the issues are expressly kept open including clause (I). The learned Single Judge to dispose of the Notice of Motion expeditiously.

9. In view of these observations, appeals are disposed of with no order as to costs.

10. Notice of Motion No. 9 of 2016 and Notice of Motion No. 12 of 2017 do not survive and stand disposed of accordingly.

(RAJESH .G. KETKAR, J.)

(NARESH H. PATIL, J.)