IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL LODGIN NO. 234 OF 2016
IN
NOTICE OF MOTION NO. 2110 OF 2015
AND
NOTICE OF MOTION NO. 136 OF 2016
IN
SUIT NO. 1064 OF 2015
ALONG WITH
NOTICE OF MOTION LODING NO. 1831 0F 2016
AND
NOTICE OF MOTION LODGING NO. 1832 OF 2016

Mahendra Karsandas Mehta
Age: Not known, Occ: Business
of Mumbai Indian Inhabitant residing
at 21, Janjira House, Rajawadi, Ghatkopar
(East), Mumbai – 400 077. .. Appellant
(Org. Deft. No. 1)

Versus

1. Excel Enterprises, a partnership firm
registered under the Patnership Act,
1932 having its office at B-10, Bellona
Building No.1, Pant Nagar,
Ghatkopar (E), Mumbai 400 077. ..Respondent No.1
(Org. Plaintiffs)

2. Sarla Ajit Paleja
Age 63 years, Occ: Housewife
of Mumbai Indian Inhabitant residing
at 19, Janjirawadi, Rajawadi Road No.1,
Opp. Rajawadi Post Office, Ghatkopar
(E), Mumbai – 400 077.

3. Meena P. Gada
Age 60 yrs., Occ: Housewife

of Mumbai Indian Inhabitant, residing at
Nirmala Niketan Co-operative Housing
Society, Marathi Colony, Opp. Dominos
Pizza Dahisar (E), Mumbai 400 068.

4. Hetal Hitesh Ramangia
Age: not known, Occ: Business
of Mumbai Indian Inhabitant residing at
A/2, Ground Floor, Ambe Smruti Society,
Devi Dayal Road, Mulund (W),
Mumbai – 400 080.

5. Prakash S. Dani
Age: not known, Occ: Business
of Mumbai, Indian Inhabitant residing
at 197/A, 10 Indralok Co-operative Housing
Society, 90 Feet Road, Opp. Panchavali,
Ghatkopar (E), Mumbai 400 077.

6. Jignesh Ashwin Khilani
Age: not known, Occ: Business
of Mumbai Indian Inhabitant residing at
Alag Property, Shop No. 2, Prabhu Krupa,
Opp. Tilak Road, Opp. Lions Garden,
Ghatkopar (E), Mumbai 400 077

7. Pravin Navnit Mehta

8. Vipul Navnit Mehta

9. Mamta Mahesh Rathod
Nos.7 to 9, residing at Murudjanjira
Bazar Peth, District Raigad - 402 401 ..Respondents
(Nos.2 to 6 – Org. Deft.
Nos. 2 to 6)

Mr. Clive D'Souza and Mr. Chirag Mathuria for appellant.
Mr. Gaurav Joshi, Senior Advocate a/w Hemang Raitatha, Jayesh Mistry i/by R M G Law Associates for respondent no.1.
Mr. Anil D'Souza for respondent Nos.4 to 6.

Mr. Ashvin Jajal for respondent nos.7 and 9.
Mr. Naushad Engineer i/by Ashok Purohit for Intervener/tenants.

CORAM : ***NARESH H. PATIL AND***
SMT. BHARATI H. DANGRE,, JJ.

RESERVED ON : 3rd August, 2017.
PRONOUNCED ON: 11th August, 2017.

P. C. [Per Naresh H. Patil, J.] :

The appellant is one of the original defendants in a Suit filed by Excel Enterprises, a partnership firm registered under the Partnership Act, 1932. The Respondent No.1 is the original plaintiff and rest of the respondents are original defendants.

2. The plaintiffs (respondent no.1 herein) filed a Suit bearing No. 1064/2015 in the Ordinary Original Civil Jurisdiction of Bombay High Court. The Plaintiffs contended that it is a registered partnership firm. The defendant no.1 (appellant herein) is 50% co-owner of the plot of land bearing Survey No.4581 to 4600 ad measuring 2685 sq. yards equivalent to 2228.25 sq. meters situated at Rajawadi post office, Ghatkopar (E), Mumbai. There are two structures standing on the subject plot which are known as “Janjira Chawl” and “Janjira House”. The structures are also occupied by the tenants. The defendants 2 and 3 are sisters of defendant

no.1 (appellant herein) and are joined as formal parties. The Plaintiffs (respondent no.1 herein) did not seek any relief against them. The defendants 4 to 6 were joined in Suit as formal parties as they had assigned their respective right, title and interest in favour of the Plaintiffs under two Memorandum of Understandings (hereinafter referred to as 'MOU' for short) executed on 28th August, 2012 and 28th September, 2012. These MOUs were executed by them with the appellant herein by a Deed of Assignment executed in June 2014. The Plaintiffs did not seek any relief against original defendants 4 to 6 in the Suit.

3. The Suit is filed inter alia seeking specific performance against the defendant no.1 (appellant herein) who has 50% undivided share and for grant of development rights under the property forming portion of the said larger property which is described in Exhibit A and B annexed to the plaint.

4. The appellant herein was in need of money and had accordingly approached respondents 4 to 6 who advanced a sum of Rs.36,00,000/- (Rupees Thirty Six Lacs only) against the mortgage of his 50% undivided share of appellant in the Suit Property. The said amount was to be repaid with interest at the rate of 24% per annum. A second MOU dated 28th

September, 2012 was executed between appellant and respondents 4 to 6 where the appellant agreed to grant development rights to respondents 4 to 6 in the suit property for lump-sum consideration amount of Rs. 5,00,00,000/- (Five Crores Only). The appellant had agreed to settle his dispute with his brother Navneet K. Mehta and caused the development rights to be assigned in favour of respondents 4 to 6. A further sum of Rs.15,00,000/- (Rupees Fifteen Lacs Only) was paid by respondents 4 to 6 to appellant. In all respondents 4 to 6 paid an aggregate amount of Rs. 51,00,000/- (Rupees Fifty One Lac only) to the appellant.

5. The Plaintiffs further contend that they approached Navnit Karsandas Mehta who agreed to transfer his 50% undivided share, right, title and interest in the suit property vide a Deed of Conveyance dated 4th November, 2006. The said conveyance was not registered. The plaintiffs have already paid a sum of Rs. 56,50,000 (Rupees Fifty Six Lacs and Fifty Thousand only) to Mr. Navneet. Mr. Navneet died on 8th November, 2013 leaving behind his legal heirs Mrs. Pravina N. Mehta (wife), Mr. Vipul N. Mehta (son) and Mrs. Mamta Rathod (married daughter). There were certain disputes with the legal heirs. Therefore, the matter was referred to sole Arbitrator Mr. M.P.S. Rao. The matter was settled by executing consent terms and Arbitrator passed Award in terms of Consent

Terms dated 23rd December, 2013. The plaintiffs paid an additional amount of Rs.75 lacs Rupees 75,00,000 (Rupees Seventy Five Lacs only) to the legal heirs.

6. In the month of June 2014 the respondents 4 to 6 assigned and transferred all their rights and interest in the first MOU and 2nd MOU in favour of the plaintiffs on the terms and conditions and for consideration of Rs.60,00,000/- (Rupees Sixty Lacs only) paid by the plaintiffs to respondents 4 to 6. The Deed of Conveyance dated 4th November, 2006 and consent Award dated 23rd August, 2013 were not challenged and therefore have become final and binding. The plaintiffs-respondent no.1 state that they requested appellant herein to grant development rights of 50% undivided share in the suit property. They informed appellant herein that they were ready and willing to comply with their part of obligation under the 2nd MOU. By letter dated 19th July, 2015 they called upon appellant and respondents 4 to 6 to comply with their part of obligation under MOU. There was some correspondence exchanged between plaintiffs-respondent no.1 and appellant herein which is placed on record.

7. It is stated that Municipal Corporation of Greater Mumbai served a notice dated 3rd June, 2009 under Section 354 of the Mumbai Municipal

Corporation Act, 1888 (hereinafter referred to as MMC Act) directing that the first floor to be pulled down and to retain the ground floor structure with proper propping. The Plaintiffs state that the said building which is referred as Chawl is more than 100 years old. So far the appellant neither demolished the first floor nor made any arrangement for alternate accommodation of the tenants. There are 38 occupants in suit property including the appellant. It is the plaintiffs' case that 31 out of 38 have consented for re-development proposal of the plaintiffs. The appellant herein is occupying 200 sq. ft. premises on the second floor of the chawl building.

8. The plaintiffs stated that they are willing to comply with the obligations of the second MOU. They are willing to re-develop the said property and willing to accommodate the tenants. The plaintiffs were ready and willing to deposit balance consideration upon appellant complying with all his obligations by executing a development agreement with respect to his 50% share in undivided property. The plaintiffs filed a Notice of Motion No. 2100/2015 with following prayers:-

> “(a) that pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to appoint the Court

Receiver, High Court, Bombay, or any other fit and proper person as this Hon'ble Court deems fit and proper as Receiver of the said suit property, more particularly described in Exhibit 'A' and shown on the plan with orange coloured boundary being Exhibit B hereto with all powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908;

(b) that pending the hearing and final disposal of the present Suit, the Defendant No.1, his servants, officers, agents and assignees be restrained by an order and injunction of this Hon'ble Court from dealing in any manner whatsoever with, disposing of, alienating, encumbering, parting with possession, creating third party rights and/or inducting any third party into the suit property or any part thereof;

(c) for interim/ad-interim relief in terms of prayer clauses (a) and (b) herein above.”

The said Notice of Motion was taken up for final hearing. By an order dated 6th May, 2016 the learned Single Judge of this Court passed impugned order directing appointment of Court Receiver and permitting the redevelopment work under the supervision of the Court Receiver.

9. A Notice of Motion No. 136/2016 was taken out by some of the tenants of the suit property seeking direction that plaintiffs be allowed to carry out the work of development and for some other reliefs.

10. Learned Counsel Mr. D'Souza appearing for the appellant submitted that L.C. Suit No. 3614/2013 was filed by the appellant against the Notice for demolition of structure issued by the Bombay Municipal Corporation. The Counsel further submitted that there was no privity of contract between the plaintiffs (respondent no.1 herein) and the defendant no.1 (appellant herein). The Respondent No.1 herein did not ask for consent of the appellant before execution of the deed of assignment allegedly executed between respondents 4 to 6 in favour of respondent no.1. It is alleged that even the appellant was not informed by the respondents that they intended to assign or transfer their rights under the MOU to third party i.e. respondent no.1 herein. The Counsel submitted that notice dated 3rd June, 2009 issued by Municipal Corporation of Greater Mumbai pertains to Janjira Chawl and not Janjira House. The Suit building is repairable, therefore, there is no need to pull it down. The Municipal Corporation of Greater Mumbai issued one more notice under Section 354 of the MMC Act in the year 2013. On receipt of

said notice tenants of suit property filed a suit in Bombay City Civil Court being L.C. Suit No. 3614/2013. The City Civil Court granted ad-interim relief on 30th September, 2013. The Counsel further submitted that the appellant herein filed a Municipal Application No. 18/2014 under Section 507 of the MMC Act for compliance of said notice issued under Section 354 of the MMC Act against the tenants of Janjira Chawl. The Municipal Corporation of Greater Mumbai initiated criminal prosecution against appellant before the 47th Metropolitan Magistrate, Dadar for not complying with the requisition contained in the notice. The appellant has even challenged the mutation entry recorded in favour of the respondent no.1 in writ petition no.7537/2015 which is pending in this Court.

11. The learned Counsel appearing for the appellant further submitted that MOU dated 28th September, 2012 was not a final document. Hence, the respondents 4 to 6 were not entitled to transfer their alleged rights to third party. The MOU had already come to an end as no probate was obtained by appellant within one year from the date of MOU as per clause-5 of MOU dated 28th September, 2012. The MOU dated 28th September, 2012 was duly stamped and registered agreement.

12. Learned Senior Counsel Mr. Gaurav Joshi appearing for

respondent no.1 (original plaintiffs) submitted that admittedly the appellant had only 50% undivided share in the suit property. The plaintiffs purchased a balance 50% undivided share, right and interest in the suit property from Navneet Mehta vide Deed of Conveyance dated 4th November, 2006 which was confirmed after his death by his legal heirs by executing consent terms dated 23rd December, 2013. In that sense the plaintiffs are co-owners having 50% undivided share in the suit property. The appellant has not challenged the said Deed of Conveyance. The appellant has received an amount of Rs. 51,00,000 (Rupees Fifty One Lacs only) from respondents 4 to 6 by granting development rights of the suit property under a MOU dated 28th September, 2012. Respondents 4 to 6 assigned those rights in favour of the plaintiffs on plaintiffs paying them Rs. 60,00,000/- (Rupees Sixty Lacs only) under an agreement dated 28th September, 2012. The Counsel submitted that there was no restrictive clause in MOU dated 28th September,2012 restraining respondents 4 to 6 to assign their rights in favour of the plaintiffs. The agreement for grant of development rights was not terminated by the appellant and is valid and subsisting. The Counsel submits that the appellant resides in 200 sq. feet room in one of the building in the suit property. In view of the execution of the MOU as stated above, the appellant has no other option then to receive balance consideration under the agreement dated 28th September, 2012 being 4,50,00,000/- (Rupees Four Crores Fifty Lacs only) which amount has been deposited by the plaintiffs in this Court pursuant to ad-interim order on 8th December, 2015 and alternate equivalent area being occupied by the appellant i.e. 200 sq. feet. Learned Counsel submits that both the buildings Janjira Chawl which is 100 years old and Janjira House; 50 years old are occupied by tenants. These buildings are in dilapidated condition. Reliance is placed on report of Consulting Engineers and Architects. The Counsel submitted that Corporation issued notice under Section 354 of the MMC Act twice for demolition of upper floor of one of the buildings. A contrary stand was adopted by the appellant in other forums than the one which the appellant has adopted now before this Court. This would exhibit the conduct of the appellant and his intentions. The Counsel submits that the learned Single Judge in the facts of the case had passed interim orders which are not only in the interest of justice but in the interest of tenants, their safety and in tune with the view adopted by the Corporation in issuing notice under Section 354 of the MMC Act. The Counsel submitted that before the trial Court the appellant seeks eviction of the tenants on the ground that building has become dilapidated and before this Court the appellant argues that building is in repairable condition. It is submitted that around 80% of the tenants are in favour of re-development. In view of the peculiar facts and circumstances the learned Single Judge had passed orders which need not be disturbed. The Counsel further submitted that the appellant has failed to demonstrate that he has financial capacity to undertake redevelopment or repairs of the building. Neither appellant has locus nor capacity to undertake the developmental work.

13. On the issue of privity of contract, the learned Counsel for the appellant placed reliance on the (i) ***Punjab and Haryana High Court*** judgment in the case of ***Shiv Dayal Kapoor V/s. Union of India*** decided on ***March 21, 1963***. Paragraph 17 of the judgment reads as under:-

> “The doctrine of 'privity of contract', as above stated, is well settled in England, but it has certain exceptions. There is deemed to be an artificial privity in the case of a trustee and beneficiary and also principal and agent. The rule of common law was expanded by engrafting fictions in order to prevent the rigour of the law. The leading case on the subject is Tweddle v. Atkinson, (1861) I.B. and Section 393, settling the rule that the third person cannot sue on a contract made by the contracting parties for his benefit and confirmed the rule in In Price v. Esston, (1833) 4 B. and Ad. 433, that a contract cannot confer rights on strangers. Lord Haldane in Dunlop Pneumatic Tyre Co., Ltd. v. Selfridge and Co. Ltd., (1915) AC. 847 at p. 853

stated the principle thus :

> "In the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a jus quaesitum tertio arising by way of contract. Such a right may be conferred by way of property, as for example, under a trust, but it cannot be conferred on a stranger to a contract as a right to enforce the contract in perso-nam."

By the term jus quaesitum tertio is meant the right of a third person to enforce a contract to which he is not a party. The peculiarity of Scots law is that when a contract shows that the object of the parties to it was to advance the inte rests of a tertius, and the tertius is named, then a jus quaesitum tertio which attached a right of the third party to enforce a contract is created giving the tertius a title to sue. (Vide the Dictionary of English Law by Eari Jowitt, page 1036). Lord Haldane in the bove passage was probably contrasting the English law from the other system. In a considered judgment of a Bench of Calcutta High Court in Khirod Behari Dutt v. Man Gobinda, AIR 1934 Cal 682, Lord-Williams J., after reviewing the English and the Indian decisions, expressed the view that though ordinarily only a person who is a party to the contract can sue on it, where a contract is made for the benefit of a third person, there may be an equity in the third person to sue upon the contract. Reference may also be made to Adhar Chandra Mondal v. Dolgobinda Das, AIR 1936 Cal 663, Babu Ram Budhu Mal v. Dhan Singh Bishan Singh, AIR 1957 Punj 169, Abdul Ghafur Butt v. Mohammad Salim, 52 Pun LR 117, and A.R. Iswaram

Pillai v. S. Tharagan, ILR 38 Mad 753 : (AIR 1914 Mad 701). This is, however, not a case in which the plaintiffs as strangers are claiming benefits of the contract. The plaintiffs' contention is that in a contract between the Government and Captain S. Kirpa Ram the contracting parties, cannot impose a liability on the plaintiffs who are strangers to the contract. Their contention is that Captain S. Kirpa Ram by agreeing to Clause 4 of the conditions of the contract, whereby it was open to the Divisional Officer to take possession of all tools, plant, materials and stores in or upon the works or the site not only belonging to the contractor but also procured by him and intended to be used for the execution of the work, could not impose a liability upon the plaintiffs or any other stranger and thereby put in jeopardy their property. The plaintiffs contend that on the strength of the terms of the contract the Goverment could not claim a right to seize the goods of the plaintiffs. In other words, in a suit by that plaintiffs the defence under Clause 4 of the terms and conditions of the contract is not open to the Government. Cheshire and Fifoot in the Law of Contract, Fifth Edition, page 378, have put the matter thus:

> "The doctrine of privity, while in principle, at least it prevents a third party beneficiary from suing on a contract, operates with equal logic to forbid the contracting parties to enforce obligations against a stranger. It has long been an xiom of the common law that a contract between A and B cannot impose a liability upon C."

Pollock in his book on Contracts puts it thus :- "A contract cannot be annexed to goods so as to follow the property in the goods either at common law or in equity". (vide 13th edition at page 187). At page 162 the matter was put thus : "It is obvious on principle that it is not competent to contracting parties to impose liabilities on other persons without their consent." The principle that when an obligation is founded upon a contract the assent of a person to be bound is at the root of the matter and is indispensable as the third party is not an assenting party he cannot be called upon to bear the burden of the contract. It is thus open to the plaintiffs to say to the Government that under contract with Captain S. Kirpa Ram you could have taken the materials, stores etc, brought by him on the site but it is not open as a defence to the plaintiffs' claim with respect to their assets as not being contracting parties they had not incurred that obligation. According to Anson, "it is a trite principle of law that a person cannot be subjected to the burden of a contract to which he is not a party." (Vide Anson's Law of Contract, 21st edition, page 161). The principle is firmly established that contractual liabilities cannot be imposed upon a party who is not a privy to the contract. It is the counter-part of the principle that a third party cannot acquire rights under a contract. We have not been referred to any principle or precedent the strength

Of which the Government can set up in defence to the plaintiffs' claim the conditions of contract to which Captain S. Kirpa Rain alone was a party.”

(ii) ***M.C. Chacko v/s. State Bank of Travancore, Trivendrum*** decided on 23rd July, 1969.

(iii) ***Welldone Estate Projects Pvt. Ltd. V/s. Today Homes and Infrastructure Pvt.*** decided on 13th December, 2010. Paragraph-13 of the order reads as under:

> "13. There was a privity of contract between the two petitioners and the respondent company. The doctrine of privity in the common law of contract provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it. Cheshire and Fifoot in the Law of Contract, Thirteenth Edition, have put the Doctrine of Privity of Contract as:
>
> The doctrine of privity, while in principle, at least it prevents a third party beneficiary from suing on a contract, operates with equal logic to forbid the contracting parties to enforce obligations against a stranger. It has long been an exiom of the common law that a contract between A and B cannot impose a liability upon C."

14. Learned Senior Counsel Shri Gaurav Joshi placed reliance on the following case laws:

(I) **Kollipara Sriramulu V/s. T. Aswathanaryana (1968) 3 SCR 387**.

(ii) **Wander Ltd. v/s. Antox India Pvt. Ltd. 1990 (Supp) S.C.C. 727**

(iii) **Deoraj v/s. State Bank of Maharashtra (2004) 4 S.C.C. 697;**

Paragraph-12 of the judgment reads as under:-

> "12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case – of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be

prudent.”

(iv) **Chandramohan V/s. Sarojbai 2005 (3) Mh.L.J.627.**

15. We have perused the record placed before us and judgments cited supra. We perused the impugned order passed by the learned Single Judge. The Counsel appearing for the appellant submitted that at an interim stage the Court passed order which has caused prejudice to the appellant as nothing would be left now for the Single Judge to be decided in a Suit, finally. At the first blush the submissions advanced by the Counsel seems to be noticeable but after going through the entire record placed before us and considering respective pleas by the parties, we find that learned Single Judge has adopted a balance view keeping in view the rights of the parties, safety of the tenants staying in 100 year old chawl, outcome of notices issued by the Corporation and the balance of convenience. It has come on record that appellant executed MOU with respondents 4 to 6 who were earlier to develop the subject property. The first MOU was signed on 28th August, 2012 and second MOU was signed on 28th September, 2012 between the appellant and respondents 4 to 6. After the execution of the first MOU the appellant executed second MOU. We find it appropriate to reproduce some of the Paragraphs of the second

MOU executed between the parties on 28th September, 2012 which read as under:-

> "2. The Co-owner herein do hereby agree to grant, transfer and assign the development rights in respect of his undivided 50% share, right, title and interest in respect of the said Property more particularly described in the Schedule hereunder written in favour of the DEVELOPER herein, And the Developers have agreed to take and acquire from the Co-owner the Development rights in respect of the Co-owner's undivided 50% share, right, title and interest in respect of the said immovable property more particularly described in the SCHEDULE hereunder written and more particularly described in the Recitals of this Development Agreement for construction of the new Building/s on the said Property.
>
> 3. In consideration of the Co-owner herein agreeing to transfer, assign and grant the aforesaid development rights in respect of his undivided 50% share, right, title and interest in respect of the said Property to the Developer for the Lumpsum consideration of Rs.500,00,000/- (Rupees Five Crores only) herein, the developers do hereby agree to pay the lumpsum consideration of Rs.5,00,00,000 (Rupees Five

Crores only) to the co-owner to be paid as under:

(a) Out of which the Developers have already paid to the co-owner the sum of Rs.36,00,000/- (Rupees Thirty Six Lakh only) as earnest money cum part consideration towards the grant of development rights in respect of the said property before execution of this Memorandum of Understanding (receipt whereof the co-owner do hereby admit and acknowledge)

(b) On execution of this MOU the party of the second part has paid the further sum of Rs.15,00,000/- to the Party of the First part as a further part consideration towards the grant of development rights in respect of the said property.

(c) the balance consideration amount will be paid by the developers to the co-owner on obtaining the grant of probate and title by the co-owner in respect of the will dated 10.6.1988, left by his father in respect of the said property and also after execution of development Agreement by the co-owner in favour of developers.

4. In addition to the above consideration the Developer shall also provide/allot to the Co-owner FREE OF COST the new flats equivalent to the area in possession of the co-owner in the proposed new Building/s to be constructed upon the said Immovable Property in lieu of the existing tenements in occupation of the Co-owner in the said Property.

5. It is agreed by the co-owner to apply and obtain the grant of probate in respect of the will dated 10.6.1988, left by his father in respect of the said property within one year from execution of this MOU.

7. The Co-owner immediately after obtaining the grant of probate in respect of will dated 10.6.1988, left by his father in respect of the said property shall sign, execute and register the Development Agreement and Power of Attorney in respect of the said property in favour of the Developers herein and/or their nominee/s to carry out and/or complete formalities for redevelopment of the said Property."

16. There is no denial by the appellant that he has received Rs.51,00,000/- (Rupees Fifty One Lacs only) from respondents 4 to 6. The question raised by the learned Counsel for the appellant is that there

was no privity of contract between the appellant and respondent no.1. In the submissions of the Counsel the respondent no.1 is a third party to the transaction entered into between rest of the parties. One of the issue was that respondents 4 to 6 have no right to assign their rights in favour of respondent no.1. The Counsel appearing for the parties had referred to Specific Clauses of the MOU entered into by the parties. After perusing the same we find that the consciously and specifically the parties mentioned in the MOU that the developers would include "permitted assigns".

17. Learned Counsel appearing for the appellant submitted that as the appellant did not obtain probate in respect of Will dated 10th June, 1988 made by his father, the MOU cannot be acted upon neither respondents 4 to 6 could assign the rights of development in favour of respondent no.1. In the facts of the case, we find that it was obligatory on the part of the appellant to apply for the probate in respect of the Will and if he failed to apply for probate in the facts of the case and material brought on record, the appellant would not be entitled to restrict the respondents from entering into a further agreement based on MOU entered into by the appellant. The appellant had consciously entered into the MOU and has received a substantial amount of Rs. 51,00,000/- (Rupees Fifty One Lacs

only). From the record we noticed that Janjira chawl is a dilapidated building which is 100 years old. The MCGM had already issued 2 to 3 notices under Section 354 of the MMC Act. The first floor of the building is directed to be pulled down immediately. The safety of the tenants is at stake. Before this Court the appellant had taken a stand that building is in repairable condition and he would be in a position to repair the building but in the other forums the appellant has stated to have adopted a stand to evict the tenants from building as it had become dilapidated.

18. The tenants have also filed Notice of Motion and expressed their willingness to get the building redeveloped through respondent no.1. The learned Single Judge has also looked into this aspect of the matter including the Expert Report submitted by Structural Engineers and Architects. On 16th December, 2016 the portion of the roof collapsed in room no.7 of first floor of Janjira Chawl. Nothing was placed on record to show that appellant had taken any steps to repair the building or that he has sufficient funds with him to redevelop/repair the building. Instead the appellant filed Municipal Application No.18/2014 before the Small Causes Court for eviction of tenants. In the facts of the case the learned Single Judge rightly appreciated the reasons behind tenants approaching the City Civil Court with a prayer for getting the building repaired.

19. The respondent no.1 since beginning has expressed its readiness and willingness to develop the suit property and pursuant to order dated 18th December, 2015 passed by the learned Single Judge of this Court respondent no.1 deposited 4,50,00,000/- (Rupees Four Crores and Fifty Lacs only) which amount is still lying with the Court. Respondent No.1 stated that he is ready and willing to comply with the terms of the development agreement and the interim orders passed by the learned Single Judge.

20. It is significant to notice that 31 out of 38 occupants of the building have give their consent for redevelopment of the building by respondent no.1. The consent terms are placed on record. Out of remaining occupants, four do not reside in the said building. One room is occupied by the appellant.

21. The learned Single Judge, therefore, found a prima-facie case in favour of respondent no.1. The appellant himself had entered into an agreement for redevelopment of the suit premises. True it is that he is co-owner of the property and he would be getting the benefits under the agreement. We too find that the plaintiffs have made out strong prima-

facie case in their favour. We find that balance of convenience is in favour of plaintiffs. The tenants are senior citizens and are belonging to poor strata of Society.

22. From the order passed by the learned Single Judge, it is clear that the Court was conscious of the fact that Suit is still to be proceeded with. Therefore, the learned Single Judge maintained a balance while passing interim orders keeping in view the rights and liabilities of the contesting parties. The learned Single Judge had not left it to the plaintiffs to redevelop the property as they wish. Therefore, Court Receiver was appointed in respect of the suit property and redevelopment work is to be carried out under the supervision of Court Receiver. The price fixed for sale of the flats under the sale category would be approved in the meetings to be attended by the plaintiffs, by the Court Receiver, Architects appointed by the Court. The appellant-defendant no.1 is given liberty to attend all the meetings with Court Receiver and Architects. From the order, we find that the Court has taken abundant precaution in safeguarding the interest of the contesting parties without keeping any room for any apprehension in the minds of the contesting parties in respect of redevelopment of the property. In this view of the matter, we are not inclined to interfere with the impugned order passed by the

learned Single Judge. The Appeal is dismissed.

23. In view of dismissal of appeal, nothing survives for consideration in pending Notices of Motion. Notice of Motion (l) No.1831/16 and Notice of Motion (l) No. 1832/16 stand disposed of accordingly.

(SMT. BHARATI H. DANGRE,J.) **(NARESH H. PATIL,J.)**

24. The learned Counsel for appellant prays for maintaining status-quo as on today in respect of subject structures for a period of eight weeks.

25. The learned Counsel appearing for respondents and Intervenors opposed the prayer. It is submitted that buildings have become dilapidated. It will be hazardous and dangerous for the life of occupants, if the buildings are not demolished at the earliest.

26. We have heard the Counsel. In the facts of the case, we are not inclined to grant status-quo as on today. The request stands rejected.

(SMT. BHARATI H. DANGRE,J.) **(NARESH H. PATIL,J.)**

L.S. Panjwani, P.S.