

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
LEAVE PETITION NO. 250 OF 2017
IN
SUIT (L) NO. 412 OF 2017**

Brookfield Kalamboli Flat Dharak Malak
Kalyankari Sanstha Welfare Association ...Petitioners
Versus
Monarch Brookfields LLP & Ors ...Respondents

**WITH
LEAVE PETITION NO. 254 OF 2017
IN
SUIT (L) NO. 412 OF 2017**

Brookfield Kalamboli Flat Dharak Malak
Kalyankari Sanstha Welfare Association ...Petitioners
Versus
Monarch Brookfields LLP & Ors ...Respondents

Mr Manohar V Shetty, a/w Mr Shaunak Shetty, for the Petitioners.
Mr Dipen Furia, i/b Shah & Furia Associates, for Respondents Nos. 1
to 5 & 8.
Ms Priya Diwadkar, a/w Mr Yuvraj Mane, i/b Manilal Kher
Ambalal & Co, for Defendant No. 9.

CORAM: G.S. PATEL, J
DATED: 15th December 2017

PC:-

1. This is completely a misconceived petition under Clause XII. The suit purports to be one for specific performance of flat purchase agreements. These are Exhibits II to IX to the Plaint. Admittedly they were all executed in Navi Mumbai. The property in question is in Navi Mumbai. It is under Receivership under separate orders passed in proceedings under Section 9 of the Arbitration and Conciliation Act.

2. Now certain flat purchasers come forward and seek specific performance of those agreements. They seek to bring this suit within the jurisdiction of this Court by saying also that Defendant No. 9, the non-banking finance company that granted finance, has initiated proceedings under the SARFAESI Act. Defendant No. 9 is not the developer and there is no decree of specific performance sought, obviously, against Defendant No. 9. What is sought in prayer (i) is a declaration that a notice issued at the instance of Defendant No. 9 under Section 13(2) of the SARFAESI Act and further notices of 17th November 2016 and 23rd December 2016 are all void and voidable as against the Plaintiffs and other flat purchasers.

3. In a specific performance suit it is difficult to see how such a relief can be maintained, and there is very likely a complete misjoinder of parties and causes of action. Merely because SARFAESI proceedings have been initiated, that will not constitute a material part of the cause of action in a specific performance

action sufficient to warrant the grant of leave under Clause XII of the Letters Patent.

4. Leave is refused. The Leave Petition is dismissed.

5. There is an accompanying petition for leave under Order 1 Rule 8. This will not survive since the petition for leave under Clause XII is dismissed. That petition is also dismissed.

(G. S. PATEL, J)