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

COMMERCIAL APPEAL NO. 689 OF 2016
IN
SUMMONS FOR JUDGMENT NO. 25 OF 2016
IN
SUMMARY SUIT NO. 1044 OF 2015

WITH
NOTICE OF MOTION NO. 3045 OF 2016

Dishti Realtors L. L. P.	}	Appellant
versus		
PNK Space Development	}	
Pvt. Ltd.	}	Respondent

Mr. Aspi Chinoy – Senior Advocate with Mr. Ajit Tamhane, Mr. Ashish Ghadge and Mr. Rohan Tamhane i/b. M/s. Tamhane and Co. for the appellant.

Mr. P. K. Samdani – Senior Advocate with Mr. Ajit Jakhadi, Mr. Chetan Pathak and Mr. Amol Chile for the respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- JANUARY 27, 2017

P.C. :-

1. After this appeal was argued for some time by Mr. Chinoy, learned senior counsel appearing for the appellant and a suggestion was made by the court, both sides have agreed that by their consent, this appeal can be disposed of with the following order:-

(a) The Summary Suit No. 1044 of 2015 stands decreed.

(b) The appellant will pay to the respondent-plaintiff a sum of Rs.22.65 crores with interest at the rate of 9% per annum from today i.e. 27th January, 2017.

(c) This amount and computed together with interest shall be paid by a post dated cheque and which would not be encashed on or before 31st December, 2018. Such post dated cheque shall be handed over within a period of 10 days from today.

(d) In the event the cheque is dishonoured on presentation, then, in addition to all legal remedies (civil and criminal), it would be open to the respondent-plaintiff to execute and enforce this decree in accordance with law by attaching and selling the immovable property, which is more particularly described in para 3 at page 3 of the plaint.

(e) The parties confirm that this description of the immovable property in para 3 of the plaint accords with all the statutory documents and records such as Property Registration Card, 7X12 Extract etc.

(f) That this immovable property, even if taken up for development by the appellant-original defendant, before any actual construction activity commences thereon, they would pay the sum of Rs.22.65 crores with interest as aforesaid and if such payment is made prior to 31st December, 2018, the respondent-plaintiff shall return the post dated cheque and no encashment thereof would then be permissible. The decree then to be marked satisfied.

(g) In the event of default of handing over the sum together with interest or the encashment of the cheque, the respondent-plaintiff shall execute and enforce the decree in accordance with law and it would be open for the respondent-plaintiff then to proceed against not only this immovable property and attach and sell it, but all other assets and properties of the partners of the appellant.

(h) For the above purpose, Mr. Chinoy, on instructions, states that the appellant is a Limited Liability Partnership (LLP). Therefore, it can be treated as an entity distinct from all other legal entities.

(i) This conversion in the status as above is post filing of a company petition for winding up of the respondent company is the clarification given by Mr.Samdani. We accept both these statements.

(j) In the light of the clarification by Mr. Chinoy with regard to the legal status of the appellant, the respondent-plaintiff, in the event of default, can proceed and in accordance with law, including by invoking the provisions of Order XXI Rules 49 and 50 of the Code of Civil Procedure, 1908.

2. The order of the learned Single Judge, as impugned in this appeal and subsequently corrected stands substituted by the

present order. The appeal is disposed of in these terms. There would be no order as to costs.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**