

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION NO. 161 OF 2016**

Roshanlal K Kothari & Ors ...Petitioners
Versus
Mishal Construction Pvt Ltd & Ors ...Respondents

**WITH
COMM. ARBITRATION PETITION (L) NO. 268 OF 2016
WITH
COMM. ARBITRATION PETITION (L) NO. 278 OF 2016
WITH
CHAMBER SUMMONS (L) NO. 65 OF 2017**

Mr Mayur Khandeparkar, *a/w Mr Nilesh Gala, i/b Manish N Gala,
for the Petitioner in CARBP/161/16.*
Mr PV Nichani, *i/b Dilip Shukla for the Petitioner in CARBPL/
268/16.*
Mr AS Rajadhyaksha, **Senior Advocate**, *a/w Mr PA Sharma, i/b
AK Karandikar, for Respondent No. 1 in CARBP/161/16*
Mr AS Khandeparkar, *a/w Mr PA Sharma, i/b AK Karandikar for
Respondent No. 1 in CARBPL/268/16.*
Mr RY Sirsekar, *AGP, for Respondent NO. 2, BMC.*

CORAM: G.S. PATEL, J
DATED: 5th April 2017

PC:-

1. Parties have obtained the statement of disclosure of Mr Pradeep Sancheti. It is taken on record and marked “X” for identification with today’s date. The society is now transposed as Petitioner No. 6.

2. The reliefs sought are very wide and sweeping. They include, to all intents and purposes, ejectment of the developer (the 1st Respondent) from the project altogether and the continuance of construction by the Court Receiver in the developer’s place and stead. I do not see how with this kind of prayer it is possible for the Petitioner to seek that the developer should continue to pay monthly transit rent. Surely this is a case of the society trying to have it both ways. It is one thing for an individual flat purchasers to make this claim. It is quite another for the society to say this.

3. I will, however, leave it open to the society to make whatever claims it wants before Mr Sancheti. He may in his discretion of course require the developer to demonstrate its *bona fides*, capacity or even to furnish security. Those are matters for his consideration. I do not propose to make any such orders at this stage nor will I continue the previous order of 27th October 2016 in view of the significant change in circumstances.

4. In any case, that order, which required payment of compensation by the developer was at a time when the only Petitioners were all members of the Society, and the statement made to continue paying monthly transit rent was also without prejudice to the rights and contentions of parties. Requiring the 1st

Respondent to continue to pay in this fashion, now that the society is a Petitioner does indeed prejudice both the rights and the contentions of the 1st Respondent. That order, coupled with the prayers sought, would have the effect of ousting the builder altogether but at the same time requiring the builder to meet contractual obligations. *Prima facie*, this seems to be untenable. The order requiring the 1st Respondent to continue paying transit rent is not continued. Liberty to the parties to apply to the learned Sole Arbitrator.

5. At present, the situation at site is that there is a stop work notice. The 1st Defendant cannot develop without the stop work notice being vacated. As long as there is a stop work notice the 1st Respondent cannot carry out any work at the suit site and is required to maintain *status quo* in respect of the premises sold or agreed to be sold to new flat purchasers as also the premises allotted to the original members of the society. This in keeping with the order dated 29th December 2016. Of course, if these circumstances should change, it will always open to both sides to apply to the learned sole Arbitrator for suitable orders.

(G. S. PATEL, J.)