

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

**APPEAL (L) NO. 447 OF 2017  
WITH  
NOTICE OF MOTION (L) NO. 2541 OF 2017  
IN  
APPEAL (L) NO. 447 OF 2017**

Pawankumar Arya and 5 others ..... Appellants

Vs.

Ravikumar Arya and 9 others ..... Respondents

Mr. Dhond, senior counsel a/w Mr. Tamboly a/w Mr. Jejeebhoy a/w Mr. Vivek Vashi, Ms. Alya Khan, Ms. Aditi Bhansali i/b Vashi & Vashi for the appellants.

Mr. Haresh Jagtiani senior counsel a/w Mr. Siddhesh Bhole., Ms. Apurva, Bhavi Vora for respondent nos. 1, 2, 5 & 6.

Mr. Navroz Seervai a/w Mr. Siddhesh Bhole, Ms. Apurva M., Bhavi Vora for respondent nos. 3 & 4.

Mr. Ravi Kadam a/w Mr. Siddhesh Bhole, Ms. Apurva M, Mr. Bhavi Vora for respondent nos. 8 & 9.

Ms. Asha Nair i/b Diamondwala & Co. for the respondent no. 10.

**CORAM : SMT. VASANTI A. NAIK,  
SARANG V. KOTWAL, JJ.**

**DATE : DECEMBER 21, 2017.**

**P.C.**

By this intra court appeal, the judgment of the learned Single Judge, dated 30/11/2017 is appealed against.

The appellants are the original plaintiffs. The appellants had filed a Suit (L) no. 194 of 2015 against the respondents seeking the relief against the transfer of the property of Kash Foods in favour of the respondent no. 10 Omkar Builders. The appellant No. 1-Pawankumar Arya and the appellant nos. 2 to 6

belong to the Pawankumar Arya Group (hereinafter referred as “PA group” for the sake of brevity) and the defendant nos. 1 to 6 belong to the group of Mr. Ravikumar Arya (herein after referred to as 'RA Group') who is the brother of Mr. Pawankumar Arya and is arrayed as the respondent no. 1 to this appeal. According to the appellants-plaintiffs, the defendant no. 7 MP recycling company was jointly held by PA group and RA group with each credit or holding 50% of its shareholding. MP recycling held 25% of shareholding in defendant no. 8-Kash Foods. Kash Foods owned a plot of land at Worli admeasuring about 4134.27 sq. meters. 25% of the shareholding in Kash Foods was purchased by MP recycling and the remaining 75% of the shareholding in Kash Foods was bought by RA Group in 2011 in their individual capacities from some investors. By the conveyance deed dated 22/12/2012, a portion of the assets of Kash Foods was transferred to respondent nos. 3 & 4 that are the members of the RA Group. A development agreement was executed between Omkar-defendant no. 10, Kash Foods-defendant no. 8 and the defendant nos. 3 & 4 that was subjected to challenge by the plaintiffs in Suit (L) No. 194 of 2015. During the pendency of the suit, the suit was settled and the consent terms were tendered in the Court. The suit was disposed of in accordance with the consent terms and also the statements made by the counsel for the parties and recorded in paragraph nos. 3 & 4 of the order disposing of the suit in accordance with the consent terms, dated 14/08/2015. As per the consent terms, out of 15 apartments that were to come up on the Worli land, 8 apartments admeasuring 27000 sq. meters in all were to fall to the share of the appellants-plaintiffs and 7 apartments with a total area of 52000 sq. metres were to go to the defendant nos. 1 to 6. It is the case of the appellants that as per the consent terms, the letter of allotment for their 8 apartments was liable to be executed by the defendant no. 10- Omkar and the same was liable to be counter signed by the defendant nos. 1 to 6. According to the appellants, 'Omkar' had in accordance with the consent terms executed the letter of allotment in annexure 'E' in respect of the 8

apartments but the defendant nos. 1 to 6 refused to abide by the consent terms and counter sign the letter of allotment as per annexure 'E'. In view of the refusal on the part of the defendant nos. 1 to 6-RA Group to do so, proceedings were filed by the appellants under Order 21 Rule 34 of the Code of Civil Procedure for the execution of the consent decree viz. for execution of the document at annexure 'E' to the decree dated 14/08/2015, by the defendant nos. 1 to 6 and the defendant no. 10-Omkar jointly and/or severally. The execution application was rejected by the learned Single Judge by the judgment dated 30/11/2017 after holding that neither Omkar nor the RA Group could have been directed at that stage to execute annexure 'E' to the consent terms nor could the RA Group be restrained from dealing with the properties that form the subject matter of Kash Foods Property. Being aggrieved by the dismissal of the chamber summons, the appellants have appealed against the judgment dated 30/11/2017.

Shri. Dhond, the learned senior counsel appearing for the appellants referred to the order of the learned Single Judge dated 14/08/2015 in Suit (L) no. 194 of 2015 as also the consent terms dated 14/08/2015 and the annexures appended thereto to submit that it was necessary for the defendant nos. 1 to 6 and the defendant no. 10-Omkar to abide by the consent terms that form a part of the decree in view of the order dated 14/08/2015 in Suit (L) no. 194 of 2015. It is submitted by referring to clauses 9-d, 22, 24, & 28 of the consent terms, specially clause 28, to submit that the defendant no. 10-Omkar and defendant nos. 1 to 6-RA Arya Group were liable to execute an allotment letter, as drafted at annexure 'E' appended to the consent terms. It is submitted by referring to annexure 'E' of the consent terms that the said annexure were confirmed on behalf of the RA Arya Group. It is submitted that in view of clause 28 of the consent terms, it was necessary for the defendant nos. 1 to 6 to execute the letters of allotment/entitlement of flats in annexure 'E'. It is submitted that it was

agreed on behalf of the defendant nos. 1 to 6 and the defendant no. 10 by their counsel, before the learned Single Judge on 14/08/2015 in Suit (L) No. 194 of 2015 that letter of allotment in annexure 'E' would be executed. It is submitted that the learned Single Judge was not justified in observing that neither Omkar nor the defendant nos. 1 to 6-members of RA Arya Group could have been directed at that stage to execute the letter of allotment in the form set out in annexure 'E'.

On hearing the learned counsel for the parties and on a perusal of the judgment of the learned Single Judge dated 30/11/2017, it appears that the learned Single Judge had rightly dismissed the chamber summons for a direction against the defendant nos. 1 to 6 and 10 to jointly and/or severally execute the document at annexure 'E' to the decree. It would not be necessary to refer to and consider all the clauses of the consent terms, as for seeking the execution of the letter of allotment in the form at annexure 'E', the appellants have heavily relied on clause 28 of the consent terms. Clause 28 of the consent terms reads thus:

*“28. Omkar Realtors and Developers Private Limited (“Omkar” or “Defendant No. 19”) is hereby directed/requested to issue a separate letter in relation to the PA Group's entitlement to the PA Kash Foods Property in Omkar 1973 Project (more particularly annexed at Annexure A hereto) as per the draft at Annexure E hereto. Omkar is hereby further directed to strictly abide by the Restraint in relation to the PA Kash Foods Property”.*

At this stage, it would be necessary to note that Omkar Realtors was not a party to the consent terms though it was a party to the suit. Be that as it may, the learned counsel for the defendant no. 10-Omkar had made a statement on instructions at the time of the disposal of the suit on the basis of the consent terms on 14/08/2015 that Omkar would issue the letter of allotment in the form

at exhibit 'E' to the consent terms. Since the suit was not only disposed of on the basis of the consent terms and the same was disposed of on the consent terms and also the statements made by the learned counsel for the parties that were recorded in paragraph nos. 3 & 4 of the order dated 14/08/2015, defendant no. 10-Omkar would have been liable to execute the letter of allotment in form 'E'. The defendant no. 10-Omkar has duly executed the letter of allotment in annexure 'E' and there is no dispute about that. The relief sought by the appellants by the prayer in the chamber summons for a direction against RA Group to execute the letter of allotment in form 'E' would now survive. We do not find anything in clause 28 of the consent terms that casts an obligation upon the defendant nos. 1 to 6 or even the defendant no. 10-Omkar to execute the letter of allotment in the form, as per annexure 'E'. By the consent term in clause 28, the defendant no. 10-Omkar was directed/requested to issue a separate letter in relation to plaintiff's entitlement-PA Group's entitlement to Kash Foods Property viz. the Worli property as per the draft at annexure 'E'. Though clause 28 does not cast any obligation upon the defendant no. 10-Omkar to execute the letter in the form at annexure 'E', in view of the statement made by the counsel for the defendant no. 10-Omkar at the time of recording of the consent terms on 14/08/2015 which forms a part of the consent decree, the defendant no. 10-Omkar was obliged to issue the letter of allotment in the form at annexure 'E'. By clause 28 of the consent terms, the defendant no. 1 to 6 had not agreed to execute the letter of allotment as per the draft at annexure 'E'. Reliance is placed by the learned counsel for the appellants on clauses 9-d, 22, 24 & 28 of the consent terms to submit that on a combined reading of clauses 9-d, 22, 24 & 28 it could be apparent that the defendant nos. 1 to 6 had agreed to issue the letter of allotment as per the draft at annexure 'E'. The submission is liable to be rejected. It would be necessary to reproduce clauses 9-d, 22, 24 & 28 of the consent terms at this stage only to support our findings that none of the said clauses would show that the defendant nos. 1 to 6 agreed to execute the letter of

allotment in form 'E'.

Clauses 9 (d), 22, 24 & 28 read thus:

*Clause “9. The valuers shall, using internationally accepted methods of valuation, value:*

*(d) Kash Foods property in the Omkar 1973 Project under development at Worli (which is more particularly described at Annexure A hereto), which is the agreed upon entitlement of the PA Group by Kash Foods and/or RA Group (“PA Kash Foods Property”)*

*Clause 22. RA Group and/or Kash Foods shall not in any manner, directly and/or indirectly or derivatively, be entitled to sell and/or transfer and/or dispose of and/or encumber and/or otherwise deal with the PA Kash Foods Property (more particularly defined in the schedule of Annexure A) (the “Restraint”). The modification, if any, of the Restraint, shall be identified in the Supplementary Consent Terms. It is expressly agreed and understood between the Parties that the RA Group is free to deal with RA Kash Foods Property (as more particularly defined in Annexure B) as their exclusive and absolute owners thereof with effect from the filing of these consent terms and the PA Group does not have any claim direct, derivative of whatsoever nature upon the same.*

*Clause 24. The PA Group withdraws all allegations against all the Defendants in the captioned Suit and confirms that the PA Group does not have any further interest in Kash Foods Pvt. Ltd or any of its properties save and except properties described in PA Kash Foods Portion, more particularly described at Annexure A herein.*

*Clause 28. Omkar Realtors and Developers Private Limited (“Omkar” or “Defendant No. 19”) is hereby directed/requested to issue a separate letter in relation to the PA Group's entitlement to the PA Kash Foods Property in Omkar 1973 Project (more particularly annexed at Annexure A hereto) as per the draft at Annexure E hereto. Omkar is hereby further directed to strictly abide by the Restraint in relation to the PA Kash Foods Property”*

A lame attempt was made on behalf of the appellants by referring to paragraph 3 of the order of the learned Judge dated 14/08/2015 in Suit (L) No. 194 of 2015 to submit that it could be gathered from the statements made by the

counsel for the defendant nos. 1 to 6 and the defendant no. 10-Omkar that the defendant nos. 1 to 6 had agreed to execute the letter of allotment as per the draft at annexure “E”. On a reading of paragraph 3 it appears that a statement is not made by the counsel for the defendant nos. 1 to 6-members of RA Group- that the defendant nos. 1 to 6 would execute the letter of allotment in favour of the plaintiffs as per the draft at annexure 'E'. Paragraph 3 of the order dated 14/08/2015 reads thus:

*“Mr. Samdani, learned Senior Advocate on behalf of Defendant No. 10, the developer, states that this division of flats in Annexures “A” and “B” is between the two Arya groups inter se. For their part, Mr. Dwarkadas, learned Senior Advocate for the Plaintiffs, and Mr. Jagtiani, learned Senior Advocate for Ravi Arya Group, agree that the division in Annexures “A” and “B” is final vis-a-vis Defendant No. 10. They also agree that allotments made and possession given in terms of Annexure “A” and Annexure “B” would constitute a full, sufficient and complete discharge of the 10<sup>th</sup> Defendant's obligations under the Development Agreement, as also the individual flat agreements already executed in favour of the parties. In view of these statements made by Mr. Dwarkadas and Mr. Jagtiani, which are on instructions, Mr. Samdani states, on instructions, that his clients, Defendant No. 10, will issue the letter a proforma of which is at Exhibit “E” to the consent terms”.*

We do not find any statement in paragraph 3 that would even remotely give an impression that defendant nos. 1 to 6 had agreed to execute the letter of allotment in favour of the plaintiffs as per the draft at annexure 'E'. In the circumstances of the case, we find that the learned Single Judge had rightly dismissed the chamber summons for a direction against the defendant nos. 1 to 6 for execution of the allotment letter in terms of annexure 'E'.

In the result, we dismiss the appeal with no order as to costs.

At this stage, the learned senior counsel for the appellants seeks the continuation of the ad-interim relief granted by the learned Single Judge in the chamber summons for 6 weeks. It is stated that by the said interim relief, the

defendant nos. 1 to 6 were restrained from creating third party rights in the 7 flats to which defendant nos. 1 to 6 are entitled under the consent terms.

The prayer is strongly opposed by the learned counsel for the respondents.

In the circumstances of the case, we do not find that a case is made out by the appellant for the continuation of the interim relief granted by the learned Single Judge in the proceedings in the chamber summons, specially when the restraint, according to the appellants is against the creation of third party rights/interest in the property to which the defendant nos. 1 to 6 are entitled. We therefore, reject the prayer made on behalf of the appellants. Order accordingly.

**[SARANG V. KOTWAL, J.]**

**[SMT. VASANTI A. NAIK, J.]**