

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL REVISION APPLICATION NO. 344 OF 2018****IN****SUMMONS FOR JUDGMENT NO. 76 OF 2015****IN****SUMMARY SUIT NO. 207 OF 2015****Harish Hiralal Mehta & Anr.****..... Applicants****VERSUS****Daksha Ajay Khatlawala & Anr.****..... Respondents**

Mr.Chaitanya Chavan, a/w. Mr.Amit Bhave, Mr.Vinod Sakpal, i/b.
Milan Bhise & Co. for the Applicants.

Mr.P.P.Chavan, i/b. Mr.Gopal Shah for the Respondents.

CORAM : R.D. DHANUKA, J.**DATE : 20th AUGUST, 2018****P.C.**

By this civil revision application filed under section 115 of the Code of Civil Procedure, 1908, the applicants have impugned the order dated 26th February,2018 passed by the learned Ad-hoc Judge, City Civil Court, Borivli Division Dindoshi, Mumbai in the Summons for Judgment No.76 of 2015 filed by the respondent (original plaintiff) granting conditional leave to defend to the petitioners (original plaintiffs) upon depositing a sum of Rs.60,00,000/-.

2. The parties have entered into a Memorandum of Understanding dated 9th November,2013 in respect of a flat bearing no.19A/19B, 4th Floor, Vandana, N.S.Road No.4, JVPD Scheme, Vile Parle (West), Mumbai – 400 056. It is the case of the applicants that the total sale

consideration agreed under the said agreement was Rs.3,85,50,000/- payable in the manner prescribed under the said agreement. Out of the said amount, the respondents had agreed to pay an amount of not exceeding Rs.1,25,00,000/- to the Bank of Baroda on or before 31st December,2013 on behalf of the applicants. It is not in dispute that the respondents paid a sum of Rs.20,00,000/- to the applicants and paid a sum of Rs.40,00,000/- to the Bank of Baroda on behalf of the applicants under the said MOU.

3. The respondents vide notice dated 18th January,2014 terminated the said MOU on the ground that the applicants had not made out a clear title. Reliance is placed on clause 9 of the agreement entered into between the applicants and their predecessor in title which contemplated execution of a transfer deed by the predecessor in title of the applicants in favour of the applicants.

4. The learned trial judge has considered all these aspects and has directed the applicants to deposit a sum of Rs.60,00,000/- while granting conditional leave to defend the suit.

5. Learned counsel appearing for the applicants submits that the agreement entered into between the predecessor in the title of the applicants and the applicants itself was a deed of conveyance and various rights were granted in favour of the applicants by the predecessor in title in the said document including the power to sale. He submits that the respondents thus could not have terminated the said MOU on the ground that petitioners had allegedly not cleared the

title.

6. A perusal of the agreement entered into between the applicants and their predecessor in title clearly indicates that clause 9 thereof contemplated execution of a transfer deed for the purpose of effecting transfer of suit property in favour of the applicants.

7. It is not in dispute that the respondents had made part payment under the said MOU however refused to pay the balance amount in view of the applicants not clearing their title. The said flat was already mortgaged in favour of the Bank of Baroda. In these circumstances, the respondents in my *prima facie* view were justified in terminating the MOU entered into between the applicants and the respondents. Learned counsel for the applicants does not dispute that there was no transfer deed entered into between the predecessors of the title of the applicants and applicants in respect of the flat in question.

8. The applicants also do not dispute that the applicants have not filed a suit for specific performance of the said MOU against the respondents.

9. The learned trial judge has considered all these aspects in great detail and has rightly imposed a condition of deposit of Rs.60,00,000/- against the respondents while granting conditional leave to defend. I do not find any infirmity in the impugned order passed by the learned Ad-hoc Judge, City Civil Court. Civil revision application is devoid of merits and is accordingly dismissed. There shall be no order as to

COSTS.

10. Learned counsel appearing for the applicant on instruction states that his clients would deposit the said amount of Rs.60,00,000/- with the trial court within four weeks from today. Statement made by the learned counsel is accepted as and by way of undertaking to this court. The applicants would inform the respondents about such deposit within one week from the date of such deposit. No further extension of time would be granted.

11. In view of the undertaking rendered by the learned counsel for the applicants, the respondents shall not take any further steps to execute the order passed by the learned trial court for a period of four weeks from today.

[R.D. DHANUKA, J.]

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