

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3785 OF 2017

IN

FIRST APPEAL NO. 1309 OF 2017

Sai Sneh Mansi Co-operative Housing

Society Ltd and Others

..Applicants

Vs.

Mr. Laxman Sahebanna Mehetre

..Respondent

Mr. Atul Rajadhyaksha, Senior Counsel a/w Mr. Akhilesh Dubey, Mr. Rahul Sharma, Sameer Singh i/b Law Counsellors, for the Applicant.

Mr. G. S. Godbole i/b Sumit S. Kothari, for Respondent No.1.

CORAM:-K. K. TATED & B. P. COLABAWALLA, JJ.

DATE :- MARCH 19, 2018.

P. C.:

Heard. By this Civil Application, the Applicants are seeking to stay the operation and implementation of the judgment and decree dated 29th April, 2017 passed by the 7th Jt. Civil Judge, Senior Division, Pune in Special Civil Suit No.108 of 2014 directing them to execute the conveyance/sale deed in respect of the suit property as per the Memorandum of Understanding dated 25th February, 2010 in favour of

the Respondent-Plaintiff.

2 The learned counsel Mr. Godbole, appearing on behalf of the Respondent/Plaintiff submits that they have already deposited a sum of Rs.5,27,65,056/- as per judgment and decree dated 29th April, 2017 in trial court. He submits that if clause nos.2 and 4 of the impugned decree are stayed, then, the trial court may be directed to invest the same amount in the Fixed Deposit of any Nationalized Bank initially for a period of one year and the same to be continued till the final hearing and disposal of the First Appeal. He further submits that they have already paid stamp duty of Rs. 51,35,700/- plus penalty of Rs. 80,11,700/- i.e. total 1,31,47,400/-. He further submits that in case the Respondent-Plaintiff succeeds in the present Appeal, then, the Applicants be directed to pay additional amount of stamp duty and penalty, if any, at the time of executing the sale deed in their favour. To that effect, the learned senior counsel for the Applicants, after taking instructions from his client through advocate on record, makes a statement that they are ready and willing to take additional burden of stamp duty and penalty, if any, subject to out come of the First Appeal.

3 Considering the fact that the Appeal has already been

admitted by this Court and the facts stated herein above, we are of the opinion that the Applicants have made out a case for stay of operation and implementation of clause nos. 2 and 4 of the judgment and decree dated 29th April, 2017 till the hearing and final disposal of the First Appeal.

4 Hence, the following order:-

(a) The operation and implementation of clause nos.2 and 4 of the judgment and decree dated 29th April, 2017 passed by the 7th Jt. Civil Judge, Senior Division, Pune in Special Civil Suit No.108 of 2014, are stayed till the hearing and final disposal of the First Appeal.

Clause Nos. 2 and 4 read thus:-

“2. It is hereby ordered to defendant Nos.1 to 6 to perform their part of the contract-titled and named as in M. O. U. dt.25/02/2010, as extended vide Supplementary Memorandum of Understandings dt.20/08/2010 and 08/12/2010 and also directed to execute the registered Sale Deed of the suit properties, which are specifically described/mentioned in para No.1 of the plaint, in favour of the plaintiff and he be put in actual and physical possession of the same, within 60 days from the date of this order.

4. If the defendants refused/failed to execute the registered Sale Deed of the suit properties, in favour of the

plaintiff, then the plaintiff is at liberty to get the execution of the same, through the Court Commissioner by filing execution proceeding.”

(b) In case the Plaintiff succeeds in the present First Appeal, and if they will have to pay additional stamp duty and penalty, if any, that shall be borne by the Applicant-Original Defendant.

(c) The Applicants-Original Defendants are directed to protect the suit property from encroachment till the hearing and final disposal of the First Appeal.

(d) The Trial Court is directed to invest the sum of Rs.5,27,65,056/- deposited by the Plaintiff-Respondent in the Fixed Deposit Account of any Nationalized Bank, initially for a period of one year and the same shall be continued till the hearing and final disposal of the First Appeal.

(e) The Civil Application stands disposed of accordingly.

(f) Liberty granted to both parties to make an appropriate application for early hearing once the private paper book is filed by the Appellant-Original Defendant.

Parties to act upon an authenticated copy of this order.

(B. P. COLABAWALLA, J.)

(K. K. TATED, J.)