

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER (ST.) NO. 30878 OF 2018

IN

NOTICE OF MOTION NO. 4066 OF 2015

IN

S.C. SUIT NO. 2151 OF 2015

WITH

CIVIL APPLICATION (ST.) NO. 30880 OF 2018

(FOR STAY & INJUNCTION)

IN

APPEAL FROM ORDER (ST.) NO. 30878 OF 2018

M/s. Atishay Realtors Pvt. Ltd.	]	
Popularly known as R J Group of Companies, A	]	
Company registered undertaking India	]	
Companies Act, 1956 having registered Office at	]	
B/5, Parekh Apartment, Sarojini Road, Vile Parle	]	
(West), Mumbai – 400 056.	]	
	]	Appellant

Versus

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|--|---|--|
| 1. Kidwai Nagar Co-operative Housing Society |] | |
| (Proposed) |] | |

A proposed Society having address at	]	
Ladwai Nagar, R.A. Kidwai Road, Building	]	
No.04/14, Wadala, Mumbai – 400 031	]	
[through its promoters]	]	

- | | | |
|-----------------------------|---|--|
| 2. Mohammed Ryees R. Chippa |] | |
| (Chief Promoter) |] | |

Aged 55 years, Occu. : Retired,	]	
Indian Inhabitant of Mumbai,	]	
Residing at 4/14, R.A. Kidwai Nagar,	]	
Wadala, Mumbai-400 013.	]	

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| 3. Mohammed Akhtar Khan |] | |
| Aged 46 years, Occu : Taxi Driver, |] | |
| Indian Inhabitant of Mumbai, |] | |
| Residing at 2/8, R.A. Kidwai Nagar, |] | |
| Wadala, Mumbai – 400 013. |] | |

- 4 Arif Saudagar]
Aged 60 years, Occu. : Retired,]
Indian Inhabitant of Mumbai]
Residing at 8/2, R.A. Kidwai Nagar,]
Wadala, Mumbai – 400 013.]
5. Immamuddin Nooruddin Sayyad]
Aged 45 years, Occu: Garment Dealer,]
Indian Inhabitant of Mumbai,]
Residing at 8/16, R.A. Kidwai Nagar,]
Wadala, Mumbai – 400 013.]
6. Mohammed Shafique Siddigur]
Aged 65 years, Occu.: Retired,]
Indian Inhabitant of Mumbai,]
Residing at 9/11, R.A. Kidwai Nagar,]
Wadala, Mumbai – 400 013.]
7. Rashid Ahmed Khan,]
Aged 65 years, Occu.: Retired,]
Indian Inhabitant of Mumbai,]
Residing at 2/6, R.A. Kidwai Nagar, Wadala,]
Mumbai – 400 013.]
8. Ashok Ramchandra Pisal,]
Aged not known, Occu.: Retired,]
Indian Inhabitant of Mumbai,]
Residing at 10/10, R.A. Kidwai Nagar,]
Wadala, Mumbai – 400 013.]
9. Abdul Wahab Khan,]
Aged 65 years, Occu.: Retired,]
Indian Inhabitant of Mumbai,]
Residing at 9/11, R.A. Kidwai Nagar,]
Wadala, Mumbai – 400 013.]
10. Arif Abdul Rehman Shaikh,]
Aged 55 years, Occu.: Taxi Driver,]
Indian Inhabitant of Mumbai,]
Residing at 4/6, R.A. Kidwai Nagar, Wadala,]
Mumbai – 400 013.]
11. Mohammed Islam Taj Mohd. Khan,]
Aged 55 years, Occu.: Retired,]
Indian Inhabitant of Mumbai,]
Residing at 4/13, R.A. Kidwai Nagar,]

Wadala, Mumbai – 400 013.

(Defendant Nos.4 to 13 Promoter)
of Kidwai Nagar Co-operative Housing
Society (Proposed).

A Proposed Society having address at
Kidwai Nagar, R.A. Kidwai road, Building
No.04/14, Wadala, Mumbai-400 031.

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]
]

..Respondents
(Org.
Defendants)

Mr.Harish Ramesh Pawar, Advocate for appellant.

Mr.Surel S. Shah, Advocate I/b Pradnya Vairale, Advocate for respondent
Nos.1 to 7.

CORAM : A.S. CHANDURKAR, J.
ARGUMENTS WERE HEARD ON : 21ST NOVEMBER 2018
JUDGMENT PRONOUNCED ON : 26TH NOVEMBER 2018

JUDGMENT :-

1 This appeal has been preferred by the original plaintiff –Company which is aggrieved by the order passed by the trial Court rejecting its Notice of Motion and refusing to grant the prayers made therein.

2 It is the case of the original plaintiff that it is a Company incorporated under the provisions of the Companies Act, 1956 and is carrying on business of construction and development of properties. The suit property is Municipal Colony consisting of Building No.4/12, of ground and three upper floors (224 Flats) situated at R.A. Kidwai Road, Wadala, Mumbai 400 031, admeasuring approximately 1077989 sq. meters (2.6 Acres). The suit property is owned by the Municipal Corporation of Greater

Mumbai. It is pleaded that the same comprises of about 14 buildings which are occupied by various tenants of the Municipal Corporation. The said tenants proposed to form a housing Society which is defendant No.1. According to the plaintiff, the said proposed Society intended to redevelop the suit property and on that basis, the plaintiff submitted its Feasibility Report. After considering the same, the matter progressed and there was exchange of various communications between the plaintiff and the defendant No.1. The defendant No.1-Society, thereafter, appointed PGV Project Management Consultants Pvt. Ltd. as the Project Management Consultant (PMC). It also submitted its report. On 31st March 2014, the plaintiff contends that a Development Agreement as well as a document of Irrevocable Power of Attorney was executed between the plaintiff and the defendant No.1-Society. The same was duly notarized. There were again subsequent communications between the parties and the plaintiff claims to have incurred expenditure of Rs.70 Lakhs towards the re-development of the property. The plaintiff learnt that the Society along with the Director of the PMC were however trying to deprive it of its rights. Apprehending the same and on learning that the Society was looking for another developer, the plaintiff filed suit seeking a declaration that the Development Agreement as well as the document with regard to grant of Irrevocable Power of Attorney, both dated 31st March 2014, were legal and valid and

were binding on the defendant No.1. An injunction was sought seeking to restrain the defendant No.1-Society from entering into any fresh agreement with a new developer for re-development of the property.

In that suit, the plaintiff moved a Notice of Motion praying that during the pendency of the suit, the society be restrained from entering into any agreement with another developer.

3 Reply was filed by the defendant Nos.1 to 7, 10 and 11 to the said Notice of Motion. It was denied that there was any agreement between the parties as pleaded by the plaintiff. There was mere exchange of correspondence between the parties. It was denied that any Development Agreement or document of Irrevocable Power of Attorney, dated 31st March 2014 was executed between the parties. It was further pleaded that in absence of any resolution of the General Body of the Society, no such Development Agreement or document of Irrevocable Power of Attorney could have been executed. Thus, according to the said defendants, in absence of any concluded contract, the plaintiff was not entitled to any relief whatsoever.

4 The trial Court, after considering the respective submissions, *prima-facie*, held that the documents on record did not indicate existence of any concluded contract between the parties. In absence of the Development

Agreement being placed before the Court, the contentions as sought to be raised by the plaintiff were not accepted. It was, thus, held that as the plaintiff had failed to make out any *prima-facie* case to indicate existence of any legal right in its favour, it was not entitled for any interim relief. By the order dated 9th October 2018, the said Notice of Motion came to be dismissed. Being aggrieved, the original plaintiff has filed the present appeal.

5 Shri H.R. Pawar, learned counsel for the appellant submitted that the trial Court committed an error in not granting any relief as prayed for in the Notice of Motion. Referring to various documents placed on record, it was submitted that the plaintiff had taken various steps towards re-development of the property and had spent an amount of Rs.70 lakhs in that regard. The Society was not justified in claiming that there was no concluded contract between them. Reference was also made to various communications entered into after 31st March 2014 to indicate that there existed a Development Agreement between the parties on the basis of which an Irrevocable Power of Attorney came to be granted in favour of the plaintiff. The custody of those documents was with PMC and the plaintiff could not be prejudiced on account of failure to place those documents on record. It was further submitted that even in the light of the reply given by the concerned defendants in the Notice of Motion, it could be gathered that

there existed such an agreement. Moreover, it was not mandatory for the plaintiff to hold a General Body meeting for entering into such agreement. Considering the fact that substantial amount had been invested by the plaintiff in the re-development of the said property, a case of grant of interim relief had been made out. Permitting any other developer to come into the picture would seriously prejudice the plaintiff.

6 Shri Surel S. Shah, learned counsel for the respondents supported the impugned order. According to the learned counsel the suit as filed, could not be said to be a suit for specific performance in the light of prayers made in the plaint. There was no relief of specific performance sought. The defendant no.1 was merely a proposed Society and in absence of the Development Agreement as well as the Irrevocable Power of Attorney, which, according to the plaintiff had been executed, the trial Court was justified in holding that there was no concluded contract between the parties. Even if it was assumed that the custody of those documents was with PMC, it was expected that the plaintiff would have retained copies of the same. Merely by relying on exchange of various communications, the plaintiff had sought interim relief which was rightly refused by the trial Court. It was, thus, submitted that there was no reason to interfere with the impugned order.

7 I have heard the learned counsel for parties at length and have

perused the documents placed on record. From the plaint averments, it can be seen that the plaintiff has sought to rely upon the Development Agreement as well as document granting Irrevocable Power of Attorney, both dated 31st March 2014. According to the plaintiff, the originals of those documents were kept with the Director of the PMC and the same were not returned to the plaintiff. The plaintiff also relied upon communications with the Notary Public to contend that said documents were notarized. The existence of these two documents has been specifically denied by the contesting defendants. It is also their case that there was no resolution of the General Body approving execution of the said two documents. It is, thus, evident from the record that as of date, the aforesaid two documents are not available for perusal of the Court.

8 As regards various communications between the parties preceding 31st March 2014 and thereafter, *prima-facie*, the same indicate negotiations between the parties towards executing the said Development Agreement. Merely by perusing those documents, it is not possible at this stage to arrive at a *prima-faice* conclusion that there was a concluded contract between the parties resulting in execution of the Development Agreement and granting an Irrevocable Power of Attorney thereby creating rights in favour of the plaintiff.

9 The trial Court, after considering all these communications, has *prima-facie*, found it difficult to hold existence of any concluded contract between the parties. I do not find that the said finding, as recorded, though *prima-facie*, warrants interference. Further, it has been rightly observed that the aspect of re-development cannot be stalled in the light of the material available on record. Considering the nature of the reliefs sought in the suit, the aspect of compensating the plaintiff, in case it ultimately succeeds, is an option which is still available. Thus, on reconsidering the matter, I find that the trial Court did not commit any error in refusing to grant any interim relief in favour of the plaintiff. The discretion in that regard has been judiciously exercised.

10 By clarifying that the observations made in the order passed by the trial Court as well as in this order are only for the purposes of considering the prayer for grant of interim relief and by further directing the trial Court to decide the suit on its own merits without being influenced by any of the observations as made, the Appeal from Order stands dismissed with no order as to costs. Pending Civil Applications also stand disposed of.

The learned counsel for the respondents, on instructions, states that for a period of four weeks from today, the present position would be maintained. Statement accepted.

(A.S. CHANDURKAR, J.)