

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 1 OF 2014
WITH
CIVIL APPLICATION NO. 1 OF 2014**

Milan Ratilal Mehta ... Appellant/Applicant
Vs.
M/s. Bhavsar Construction Co. & Ors. ... Respondents

Mr. Ashutosh Kaushik i/b. Kaushik & Co., Advocate for the appellant/applicant.

Mr. Sanjay Jain a/w. Ms. Priya Ranade i/b. L.D. Shah & Co., Advocate for respondent no. 3.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 15th January, 2018.

P.C.:

Admit. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal from Order is directed against the order dated 1st October, 2013 passed by the learned Judge of the City Civil Court , Mumbai in Notice of Motion No. 49 of 2012 in S.C. Suit No. 3014 of 2011 thereby rejecting the Notice of Motion No. 49 of 2012. The appellant is the original plaintiff, who has filed the suit for implementation of the statutory obligation under Maharashtra Ownership Flats Act, 1963 (MOFA) against respondent nos. 1 to 3, i.e., defendant nos. 1 to 3. The appellant/plaintiff has booked a flat

no. 303 for Rs.65 lakhs by executing an Agreement dated 8th January, 1996 with respondent no. 1/original defendant no. 1, i.e., builder/developer. Respondent no. 2 is a Society and respondent no. 3 is another builder/developer who at present is developing the project and constructing the building. The appellant/plaintiff has paid Rs.15,00,000/- on the same day of the Agreement. There was no progress in the construction from 1996 till 2007. Respondent no. 2/Society on 7th June, 2007 entered into contract with respondent no. 3, who got altered the plans approved in the year 2010 and thereafter he proceeded with the construction. The owners of the land are different persons. Earlier, respondent no. 1 had entered into an agreement. Respondent no. 3 refused to enter into a fresh agreement with the appellant/plaintiff and also refused to acknowledge the part of the obligations pursuant to the agreement dated 8th January, 1996. Being aggrieved with the conduct and act of respondent no. 3, appellant/plaintiff filed the suit under MOFA. Defendant no. 3 alone appeared in the suit and filed reply opposing the Notice of Motion. The learned Judge, after hearing the parties, dismissed the Notice of Motion. Hence, this Appeal.

3. The learned counsel for the appellant argued that the challenge

is given to the order dated 1st October, 2013 on three grounds. He submitted that the learned Judge has erred in holding that there was no privity of contract between the appellant/plaintiff and respondent no. 3/defendant no. 3. He submitted that in fact the contract dated 8th January, 1996 was under MOFA and Mr. Sanjay Singh, the partner of respondent no. 3 filed reply and in the last paragraph of the reply he accepted that defendant no. 3 claims its rights from through and under defendant no. 1. The learned counsel has submitted that as all the rights and obligations are taken over by respondent no. 3 from respondent no. 1, respondent no. 3 has to perform its obligations under MOFA pursuant to the agreement dated 8th January, 1996. He has further submitted that in the approved plan of 2010, Flat no. 303 is not shown. As per the new plan, 3rd floor is shown as parking space. He further submitted that there was no delay in filing the suit because the appellant was pursuing the cause and there was a change from respondent no. 1 to respondent no. 3 and moreover, respondent no. 2/Society has entered into agreement with respondent no. 1 and respondent no. 3 did not inform about the developments to the appellant. Hence, there is no delay. He further submitted that a challenge against respondent no. 3 is always open and he is entitled to recover Rs.15,00,000/- from the respondent.

4. The learned counsel for respondent no. 3 while opposing the Appeal from Order has supported the order passed by the learned Judge of the City Civil Court. He has submitted that respondent no. 1 had entered into Agreement with the owners and the owners have terminated the Agreement with respondent no. 1 and they executed Deed of Conveyance dated 20th April, 2000 in favour of the respondent no. 2/Society. He submitted that thereafter respondent no. 2/Society has entered into contract of development of the property on 7th June, 2007 with respondent no. 3 and thereafter respondent no. 3 came into picture and got the plan approved in the year 2010. He submitted that respondent no. 3 is altogether different entity and is carrying out the development work. He is not concerned with the appellant.

5. Heard the submissions. Perused the impugned order. Perused the plan and other documents. The finding given by the learned Judge of the trial Court that there is no privity of contract between the appellant and respondent no. 3 *prima facie* appears correct. It appears from the arguments of the learned counsel for both the sides that the appellant has claim only against respondent no. 1. It is argued that respondent no. 1 is not traceable. Be that as

it may, I am of the view that the finding given by the learned Judge on the point of privity of contract and also on the point of delay is correct. No interference is required in the matter. However, if at all the appellant wants to amend the plaint, as he has not made any alternate prayer of payment of amount of Rs.15 lakhs, he is at liberty to take necessary steps.

6. With this, Appeal from Order is dismissed.

7. In view of dismissal of Appeal, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)