IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.65 OF 2018

Shri Bhagwantrao Bhausaheb Patil (Bahirat)
since deceased through :
Ranjan s/o. Bhagwantrao Pail (Bahirat) & Ors. ... Applicants
Vs.
M/s.Patil & Sons & ors. ... Respondents

with
CIVIL APPLICATION NO.50 OF 2018

Shri Neelanjan S. Chakraborty & Ors. … Applicants/ Intervenors

<u>In the matter of:</u>

Shri Bhagwantrao Bhausaheb Patil (Bahirat)
since deceased through :
Ranjan s/o. Bhagwantrao Pail (Bahirat) & Ors. ... Applicants
Vs.
M/s.Patil & Sons & ors. ... Respondents

Mr.S.M. Phatak for the Applicants in MCA/65/2018
Ms.Shirin Merchant for Applicants/Interveners in CAO/50/2018
Ms.Raksha Thakkar i/b ALMT Legal for Resp. Nos.1, 3 and 5

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 9, 2018**

P.C.:

1. This Miscellaneous Civil Application is moved for transfer under section 24 of the Civil Procedure Code of Civil Appeal No.150 of 2016 from District Court, Pune to this High Court. It is prayed that

the Respondent/Developer has filed two Suits bearing Special Civil Suit Nos.395 of 2016 and 396 of 2016. The respondent/land owner has filed Special Civil Suit No.1687 of 1996. The suits filed by the respondent/developer were dismissed and the suit filed by the land owner was allowed, against which three Appeals were filed by the Developer which are numbered as First Appeal Nos.1760 of 2007, 1764 of 2007, which are pending before the High Court and another Civil Appeal bearing No.150 of 2016, which was though filed earlier in the High Court (High Court First Appeal No.1759 of 2007), it was transferred to the District Court, Pune due to the enhancement of pecuniary jurisdiction.

2. This application is made for transfer of Civil Appeal No.150 of 2016 pending before the District Court, Pune to be transferred to the High Court as the connecting two appeals are pending before the High Court, out of which one is pending before the learned Single Judge and the other is pending before the Division Bench.

3. In this application, the respondents have no objection for transfer of the said appeal before the High Court.

4. However, in this application, 56 interveners, who are flat purchasers, have filed the application permitting them to intervene in the present proceedings. After considering the objections of the Respondents, and as the applicants in this intervention are the purchasers, the application is allowed.

5. Learned Counsel for the Interveners submits that these interveners are the flat purchasers, who have paid more than 50% of their respective amounts of consideration and are waiting for their flats. However, the construction is stalled. She submits that the interveners have approached the District Consumer Forum, however, the Consumer Forum is not taking up the matter as it is subjudice before the High Court. The learned Counsel has pointed out the order passed by the Supreme court dated 6.2.2017 wherein the Supreme Court has mentioned as under:

> "... If we understand the agony projected by Ms.Arora, learned senior counsel appearing for the petitioners, the intervenors are in the state of "Trishanku" and their interest is in jeopardy for no fault of theirs.
>
> In view of the aforesaid though we do not find any fault with the order of the High Court, we reiterate our request that was made on 4th December, 2009, to the High Court to dispose of the matter within four months hence. We are sure that the High Court shall pay heed to our request. Liberty is granted to the petitioners to mention before the High Court and bring this

order to the notice of the learned Judges, who are hearing the First Appeal pending before them."

6. In view of this, it appears that the Supreme Court has not stayed any matter before the Consumer Court and, therefore, there is no bar for the Consumer Court to proceed with the matter. The application for transfer of Civil Appeal No.150 of 2016 from District Court, Pune to this High Court, is allowed. The Registrar of the District Court, Pune is directed to send the papers of Civil Appeal No.150 of 2016 from the District Court to this High Court on or before 24.4.2018.

7. The Miscellaneous Civil Application and the Civil Application for intervention are disposed of accordingly.

8. The Registrar (Judicial I) to communicate this order to the learned Principal District Judge, Pune.

(MRIDULA BHATKAR, J.)