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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1011 OF 2017
IN
APPEAL NO. 12 OF 2015
IN
NOTICE OF MOTION NO. 650 OF 2014
IN
SUIT NO. 279 OF 2014

Parpati I. Bhojwani and anr. .. Applicants
(Org. Plaintiffs)

In the matter between

Parpati I. Bhojwani and anr. .. Appellants
Vs.
Vaidehi Akash Housing Pvt. Ltd. and ors. .. Respondents

ALONG WITH
NOTICE OF MOTION NO. 1055 OF 2017
IN
APPEAL NO. 23 OF 2015
IN
NOTICE OF MOTION NO. 649 OF 2014
IN
SUIT NO. 328 OF 2014

Ashok Bhajwani & Anr. .. Applicants
(Org. Plaintiffs)

In the matter between

Ashok Bhojwani & Anr. .. Appellants
Vs.
Vaidehi Akash Housing Pvt. Ltd. & ors. .. Respondents

Mr. Shyam Dewani a/w Mr. Pratik M. Thakkar i/by Dewani and Associates for applicants.

Mr. Amol Joshi a/w Mr. Chirag Dave i/by Legasis Partners for respondent no.1.

Mr. Navroz Seervai, Sr. Advocate i/by Appasaheb Desai & Co. for respondent no.2.

Mr. Sunil Purohit a/w Denzil Arambhan a/w Apeksha Munot i/by Wadia Ghady and Co. for respondent no.3.

CORAM: NARESH H. PATIL &
NITIN W. SAMBRE, JJ.

JANUARY 30, 2018.

P.C.

1. The learned counsel for the applicants – appellants submits that these Notices of Motion are filed for direction to restrain the respondent no.3, their officers, servants, agents and anyone acting or claiming through or under them, from dealing with the suit property or any part thereof in any manner whatsoever, by creating any third party right, interest, creating lien, selling, gifting, transferring, leasing, alienating or in any manner permitting anyone to use, occupy or claim any right over the said property, in any manner whatsoever.

2. The learned counsel for the applicants has referred to observations made by the learned Single Judge in the impugned order dated 1st December, 2014 in Notices of Motion (L) No.649 of 2014 and 650 of 2014, the other relevant documents. Affidavit-in-replies are filed by respondent no.3 and affidavit-in-rejoinders are also filed by the applicants-appellants. The learned counsel submits that the applicants, after investing substantial amount with the earlier developer i.e. respondent no.1 – Vaidehi-Akash Housing Pvt. Ltd., are still unable to get

possession of their residential flats. Number of suits are filed and are pending. Being aggrieved by an order passed by the learned Single Judge, number of appeals have been preferred and all those appeals have been admitted by this court.

3. In the earlier round of hearing, a statement was made by the learned counsel appearing for the respondent no.3 that as and when FSI slab would get increased, they would be intimating this court. The learned counsel submits that though the FSI was increased, the applicants did not get any benefit of the same as the developer has been constructing the free-sale component and selling it to third parties without allotting the units to the applicants. In the view of the learned counsel, the society and the present developer – respondent no.3 have neglected the claim of the applicants. The respondent no.3, by now, has constructed the rehab component of the project and near-about all the members of the society have been accommodated in the newly constructed flats. The counsel, therefore, submits that at least now the respondent no.3 shall take necessary steps in allotting flats to the applicants based on the agreements, documents, receipts signed / executed by the applicants with the earlier developer – respondent no.1.

4. The learned counsel appearing for the respondent no.3 submits that appeals filed by the appellants are not maintainable in view of dismissal of one such appeal i.e. Appeal No. 179 of 2016, filed against the order passed by the learned Single Judge in Notice of Motion No. 1029 of 2015 by the Division Bench (Coram: Dr. Manjula Chellur, CJ. & M. S. Sonak,J.) of this court on 23/11/2016. A copy of the said order is placed on record. On merits, the learned counsel submits that it has been held by the learned Single Judge that it is a matter of record that there is absolutely no privity of contract between plaintiffs and the respondent no.3. Respondent No.3 entered into agreement with the society on 4/4/2007, whereas the applicants claimed to have entered into agreement with respondent no.1 on 30/11/2007. Apart from that, the counsel submits that in case the plaintiffs, in future, would establish any claim for any relief, the same could be against respondent no.1 and not against respondent no.3.

5. The learned Senior Counsel Mr. Seervai appearing for respondent no. 2 – society supported the order passed by the learned Single Judge. The counsel submits that the order passed by the learned Single Judge takes care of all the issues raised herein in the Notices of Motion. All the relevant issues, which are to be considered, would be

dealt with in the suits after the parties lead appropriate evidence. The counsel reiterates that there is no privity of contract between the society and the applicants. In the facts, the claim raised by the applicants is against their earlier developer i.e. respondent no.1 herein.

6. The learned counsel appearing for respondent no.1 submits that they too have filed suits and they are pending consideration. Looking to the complex nature of the issues, it is advisable to await trial court's verdict.

7. We have perused the record placed before us for the purposes of dealing with the Notices of Motion wherein some interim reliefs are prayed by the applicants herein. The learned Single Judge has elaborately dealt with the relevant issues raised by the contesting parties. The issue relating to privity of contract, inter se relation between the parties and the principles of prima facie case are dealt with by the learned Single Judge. Some of the important clauses of the development agreement are also incorporated in the impugned order. Clauses 30, 33 and 45 are relevant for the purposes which we had gone through minutely. In para 16.5, the learned Single Judge observed as under :

16.5 The clauses quoted above, read together and in their proper perspective to be gathered from the whole agreement, clearly envisage the development and sale of the free sale component of the project by Vaidehi on their own account and as an independent contracting party, and not as agents of the Society. The contract between Vaidehi and the Society is on a principal to principal basis; it neither constitutes a partnership nor a joint venture or agency between the two. The third party purchasers with whom Vaidehi might enter into agreements for sale would have no privity of contract with the Society and the Society would in no way be responsible for any claim made by such purchasers against Vaidehi under their respective agreements for sale.

8. In the view of the learned Single Judge, the applicants should stand or fall by Vaidehi. In view of the material placed before us, we are of the view that no interference is warranted. In the facts, the applicants are not entitled for interim relief which they prayed for.

9. The Notices of Motion stand rejected.

(NITIN W. SAMBRE J.)

(NARESH H. PATIL,J.)