

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.363 OF 2017
WITH
NOTICE OF MOTION (L) NO.1072 OF 2017
IN
NOTICE OF MOTION NO.37 OF 2017
IN
SUIT NO.2547 OF 2010

Shri Siddhi Vinayak Developers & Ors. ..Appellants.

V/s.

Prathamesh Galaxy Members Welfare
Association & Ors. ..Respondents.

Mr.Bhavan Gada with Mr.N.G.Gadre i/b. M/s.L.C. Tolat & Co. for
the appellants.

Mr. Kevic Setalvad, Senior Advocate with Mr.Kunal Chheda i/b.
M.V. Kini & Co. for respondent No.1.

Mr.Sachi Udeshi i/b. Wadia Ghandy & Co. for respondent No.16

Mr.D.N. Kher, O.S.D., Office of the Court Receiver present.

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

DATE : JANUARY 15, 2018

PC.:- (PER NITIN W. SAMBRE, J.)

The respondents, a association of some of the
purchasers of the flats and shops constructed on the suit property,

have filed the suit in question bearing Suit No.2547 of 2010 on the original side praying therein declaration, injunction and for specific performance in respect of the shops / flats purchased by them.

2. The present appellant is defendant No.6 in the said suit.

3. The plaintiff-respondent No.1 took out Notice of Motion No.37 of 2017 in the said suit with a prayer for issuance of directions to defendant Nos.1 to 4 to reimburse the rent at the rate of Rs.150/- per square feet to the members of the plaintiff association. An additional prayer is made for appointment of agent of the Court Receiver i.e. such persons who have purchased the shops / flats.

4. The notice of motion came up for hearing before the learned Single Judge on April 12, 2017, who was pleased to pass an ad-interim order appointing members of the respondent No.1 – original plaintiff association as agent of the Court Receiver. As such this appeal.

5. Heard respective parties to the appeal. The learned counsel for the appellant-original defendant No.6 would strenuously urge that the order impugned is passed by the learned Single Judge in a hasty manner and that too without considering the factual matrix of the case in hand. According to him, when the matter is subjudiced before the Arbitrator, the learned Single Judge ought not to have proceeded with the matter. In addition, there were other three suits pending *inter se* between the parties, the merits of which will be definitely affected by the impugned order. According to him, the order impugned as such, is required to be set aside with directions to the learned Single Judge to decide the motion finally on its own merits.

6. *Per contra*, the learned counsel for the respondent-original plaintiff would urge that the present appellant-original defendant No.6 cannot be taken by surprise because of the order impugned passed by the learned Single Judge as this will be contrary to the earlier order dated April 23, 2014 passed on the Notice of Motion No.2702 of 2010 in the same suit. He would then urge that whatever contentions the present appellants intend to

raise, can be raised before the learned Single Judge as the motion is not finally disposed of. He further submits that for the reasons carved out from the order impugned, the present appeal against the ad-interim order is liable to be dismissed.

7. Considered the rival submissions. The suit came to be filed by respondent No.1-plaintiff for relief of declaration, injunction and specific performance. Looking to the controversy involved, by order dated April 23, 2014 the hearing of the suit was expedited. In the said suit, issues were framed on October 28, 2015. It is not in dispute that pursuant to the agreement entered into between the parties, the possession was to be handed over some time in the year 2005. However, the parties to the suit are in litigation in various proceedings, including the other three suits and arbitration proceedings before the various forum.

8. It is the case of the respondent-plaintiff that defendant Nos.1 to 4 were expected to have complied with the directions issued by the impugned order.

9. The learned Single Judge while dealing with the Notice of Motion No.2702 of 2010 filed in the present suit in question, by

consent of the parties to the suit, appointed the Court Receiver of the High Court in respect of the shops as per the chart maintained in the said order. The occupants whose names are disclosed as agents were so appointed in respect of the shops without payment of any royalty, having regard to the fact that substantial consideration was already paid.

10. In the aforesaid background, if the order impugned is appreciated, it appears that the present order is in tune with the earlier order dated April 23, 2014 passed in Notice of Motion No.2702 of 2010 in this very suit which is not under challenge in any of the proceedings.

11. Apart from above, while passing the order impugned, the learned Single Judge has referred to the order dated April, 23, 2014. In the earlier order, 15 occupants of the shops of the plaintiff-association were appointed as agents of the Court Receiver. This Court has considered the prayer of appointment of 14 more agents on the same line.

12. Apart from the above, it is required to be noted that respondent No.1 in the present suit are not parties to the

arbitration proceedings.

13. The learned Single Judge while passing the order impugned has recorded the reasons for appointing members of the association as agents of the Court Receiver and has also considered the balance of equities.

14. In the wake of the above, in our opinion, the order of the learned Single Judge is supported by the reasons which are germane, for passing the impugned order. There is no perversity or material illegality or irregularity noticed in the impugned order which warrants interference in the appellate jurisdiction. The appeal lacks merits and stands dismissed.

15. In view of the dismissal of the appeal, the Notice of Motion also stands dismissed.

(NITIN W.SAMBRE, J.)

(NARESH H.PATIL, J.)