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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO. 142 OF 2017
IN
NOTICE OF MOTION NO. 230 OF 2017
IN
COMMERCIAL SUIT NO. 53 OF 2017
WITH
NOTICE OF MOTION NO. 38 OF 2017

Zaverben VasANJI Dhanani
(Since deceased)

1a.) Rajesh VasANJI Dhanani and ors.

.. Appellants

Vs.

Kranvis Realty LLP and anr.

.. Respondents

Mr. Ashwin Sakolkar a/w Mr. Vasim Siddiqui i/by Kunal Bhanage for appellants.

Mr. M. M. Bhatt i/by M. V. Law Partners for respondent on.1.

Mr. Mehul Shah r/w Ms. Snehal Dukhale for respondent no.2.

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

FEBRUARY 14, 2018.

P.C.

1. This appeal is directed against the order dated 7/7/2017 passed by the learned Single Judge in Notice of Motion No. 230 of 2017 in Commercial Suit No. 53 of 2017.

2. This appeal is being heard since September, 2017. On various occasions, it was submitted that the parties are trying to arrive at a settlement. On the last occasion, the learned counsel appearing for the developer submitted that parties i.e. appellants and respondent no.1 – developer have reached settlement and they presented minutes of order, signed by the appellants only. Obviously, the Society was not party to the said arrangement.

3. Today the learned counsel appearing for the society submits that the majority of members are not agreeable with the proposal of the appellants in respect of removing a wall which existed between two shops occupied by the appellants. It is submitted that as agreed by the parties and in view of the order passed by the learned Single Judge, which is impugned herein, the parties would be getting two shops.

4. The learned counsel appearing for the appellants submits that in a newly constructed building, the appellants desire to have one shop instead of shops divided by a wall by maintaining the structural column as it is. This seems to be main issue, on which society and the appellants are not agreeing upon. Both the sides have certain issues to be raised in respect of the partitioning of the shop. The learned counsel for the society

submits that there was a wall earlier which was illegally removed by the appellants, which statement is disputed by the learned counsel appearing for the appellants.

5. The development agreement was reached between the parties in the year 2014. Since then no steps have been taken consequent to the execution of the development agreement due to dis-agreement between the members. Whether the shop of the appellants should be one shop or should be constructed with a wall partitioning the said shop, which according to the society is original position according to the sanctioned plan is an issue. It seems from the submissions of the counsel appearing for the developer that the developer is ready and willing to make necessary changes as the appellants desire by maintaining the sanctioned plan/development agreement but subject to approval of the society. It is true that in matters of development of the subject structure, agreements are exchanged between the developer and the society and the managing committee of the society takes the policy decisions backed by majority view of its members. The counsel appearing for the society is not agreeing to the proposal of the appellants.

6. At this stage, we are not inclined to enter into issues regarding dis-agreement between the society and the appellants being their internal matter, but the facts remain that development project is held up due to reason which does not seem to be of a great significance considering the settlement of major issues between the society and the developer.

7. The learned Single Judge has taken into consideration all the attending facts and circumstances and the pleas of the appellants and the society too. In para 4 of the impugned order, the learned Single Judge has in detailed described and narrated the responsibility of the developer. We find that the learned Single Judge has appreciated the pleas in appropriate manner and has recorded his conclusion accordingly. The view adopted by the learned Single Judge is a reasonable and sound view. We are not convinced to interfere in the view adopted by the learned Single Judge.

8. However, we clarify that after the building is constructed, the appellants may take necessary steps in accordance with law in submitting proposal of one shop. On appellants making such a request, after completion of the building, society would consider the said request of the appellants on its own merits.

9. With the aforesaid clarification, the appeal is dismissed.
10. Notice of Motion No. 38 of 2017 does not survive and disposed as such.

(NITIN W. SAMBRE J.)

(NARESH H. PATIL,J.)