

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1898 OF 2017
IN
SUIT N. 1526 OF 2002

Mahavir Developers & Builders LLP	...Applicant
<i>In the matter between</i>	
Abhishek Enterprises	...Plaintiff
<i>Versus</i>	
Mathurdas Gordhandas Trust & Ors	...Defendants

Mr Bharat Satra, *for Defendant No. 15/Applicant.*
Dr Birendra Saraf, *with Ranjeev Carvalho, Jitendra Jain, Laxman Jain, i/b Yogesh Adhia, for the Plaintiff.*
Mr NM Pigari, *i/b AJ Kandarkar, for Defendant Nos. 9, 10A to 10D.*

CORAM: G.S. PATEL, J
DATED: 13th March 2018

PC:-

1. This is a Motion under Order VII Rule 11(a) by Defendant No. 15, Mahavir Developers & Builders LLP (“**Mahavir**”). Mr Satra for Mahavir insisted that this Motion be tagged and taken up immediately. He says that on a demurrer, the Plaint is liable to be rejected for want of a disclosed cause of action. I have heard him at sufficient length. I disagree with his submissions. My reasons follow.

2. The Complaint itself seeks a declaration, first, that an agreement dated 13th December 1995, Exhibit “J” to the Complaint is valid, subsisting and binding. Mahavir is a subsequent purchaser. It was a late entrant to the dispute, added by a relatively recent amendment of February 2017. The argument from Mr Satra is that the agreement of 13th December 1995 at Exhibit “J” is allegedly “void”. He says it is void for non-fulfilment of what he says is a mandatory condition, one that required the procurement of consent of some beneficiaries under a Will of one Mathurdas Gordhandas. This is a reference to clause 2 of the agreement. The submission is a patent misreading of that clause. The condition stipulated not just that consent would be obtained, but also provided a fallback: i.e. that the sale would be completed within six months from the date when the required permissions were obtained.

3. In any case, it is settled law that in a situation such as this, a clause that provides for a time limit for completion of a sale does not, only because the conditions were not immediately met on schedule, render the contract “void”. A contract that is said to be void *ab initio* is one that created no rights to begin with. That is not the case here. It is always possible for the Plaintiff to show that the consent condition was waived, novated, or could not be complied with for reasons beyond the parties’ control; and that the alternative position obtained, with its own various possibilities. All these are matters of evidence. Indeed there are any number of possibilities when confronting a clause such as this. The non-fulfilment of obligations in one clause of a contract does not render it “void”. If there is a breach by a party of its obligations, one distinct set of results will follow; the agreement or contract does not itself become

void on this account. Prayer (c) of the Complaint is a prayer for specific performance of the agreement itself. It says so in terms and the relief in that regard is sought against Defendants Nos. 9 and 16 to 21 (but not Defendant No. 15, Mahavir).

4. Viewed from any perspective, it is not possible to say that the Complaint does not disclose a cause of action when read as a whole, or that at the instance of the 15th Defendant, Mahavir, any such application should even be entertained.

5. The Notice of Motion No. 1898 of 2017 is dismissed. No costs.

(G. S. PATEL, J)