

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO.358 OF 2017
IN
COMMERCIAL SUIT NO.10 OF 2017**

Shankeshwar Properties Pvt. Ltd.)....Applicant/plaintiff
V/s.

Ariisto Shelters Pvt. Ltd. & Ors.)....Defendants

Mr.Rohan Sawant a/w Ms.Apeksha Sharma and Ms.Sayalee Rajpurkar
I/by Kadam & Co. for applicant/plaintiff.

Mr.Samit Shukla i/by DSK Legal for defendant no.1.

CORAM : K.R.SHRIRAM,J

DATE : 21.11.2018

P.C.:-

1. Mr.Sawant for the applicant/plaintiff states that the order dated 14.12.2016 be confirmed as order in the Notice of Motion and Notice of Motion could be disposed.

2. Mr.Shukla for defendant no.1 states that the agreement does not provide for any such arrangement and therefore, their rights and contentions be kept open to be taken up if at all plaintiff takes out a fresh Notice of Motion upon receiving one week notice as contemplated in the order dated 14.12.2016.

3. In the circumstances, keeping open the rights and contentions of the parties, the order dated 14.12.2016 is confirmed as order in the Notice of Motion and the Notice of Motion accordingly stands disposed.

COMM.SUIT NO.10 OF 2017

1. Heard the counsel and the following issues are framed.

ISSUES

- 1) Whether plaintiff proves that the suit filed is within limitation ?*
- 2) Whether defendants prove that the suit is bad for mis-joinder of parties ?*
- 3) Whether defendants prove that the agreement dated 29.4.2013 is not adequately stamped and hence requires to be impounded and adjudicated as required under the provisions of Section 34 of the Maharashtra Stamp Act 1958 ?*
- 4) Whether defendants prove that in view of the agreement not being adequately stamped, plaintiff cannot seek specific performance of the said agreement ?*
- 5) Whether defendants prove that the transfer of development rights, in the facts and circumstances of this case, is a movable property and hence the agreement dated 29.4.2013 is not specifically enforceable ?*
- 6) Whether defendants prove, in the event the court coming*

to a conclusion that the agreement dated 29.4.2013 is specifically enforceable, then the same stands frustrated ?

7) Whether plaintiffs prove that they were and are always ready and willing to perform their obligations under the contract ?

8) Whether plaintiff proves that they are entitled to damages in the sum of Rs.28,72,00,000/- together with further interest @ 24% p.a. on the amount of Rs.2 crores from the date of the suit until payment/realization ?

9) Whether plaintiff proves that it is entitled to a charge of defendants' properties and projects until the amounts as claimed by plaintiff in the suit are paid ?

10) What decree ? What order ?

2. Parties are further directed as under :-

- (a) File affidavit of documents and serve a copy thereof on the other side on or before 20.11.2018 ;
- (b) inspection to be given by 1.12.2018 ;
- (c) Statement of admission and denial with reasons for denial to be exchanged by 5.12.2018 ;
- (d) Plaintiffs to file list of witnesses, affidavit in lieu of examination in

chief together with compilation of documents and serve a copy thereof upon defendants by 15.12.2018.

3 It is made clear that if affidavits of documents are not filed and inspection given, parties will not be permitted to rely upon any documents, copies whereof are not annexed to the plaint and/or written statement or mentioned in the list of documents annexed to the plaint/written statement. This, however, will not prevent any party from confronting the witness of the other side with any document.

 If statements of admission and denial are not given within the time prescribed, parties shall be deemed to have admitted the existence of all the documents relied upon by the other side.

4 Stand over to 19.12.2018 for marking of documents/recording of evidence at which time plaintiff's 1st witness shall remain present in court.

(K.R.SHRIRAM,J)