

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO. 1854 OF 2015
WITH
NOTICE OF MOTION NO. 1459 OF 2017**

M/s.Rikki Ronie Builders

...Petitioner

vs

M/s.S. Savla Constructions

...Respondent

Mr.Sharan Jagtiani with Nita Solanki I/b. Kiran Jain & Co. for Petitioner.
Mr.Atharva Dandekar for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 6 DECEMBER 2018

P.C. :

In pursuance of the liberty sought on the last occasion, i.e. on 21 November 2018, the Petitioner files an affidavit placing on record the intervening facts which necessitates its application for withdrawal of the present petition with liberty to pursue its remedy before an appropriate forum. The Petitioner, amongst other things, has placed on record an order passed by Slum Rehabilitation Authority by which the permission granted to the Respondent herein in respect of the SRA scheme has been terminated and the Applicant society before the authority has been given liberty to appoint a new developer of their own choice as per law and to complete further implementation of the subject SRA scheme.

2 The Petitioner alleges that the Respondent in the present case, through its representation, had induced the Petitioner to enter into a development agreement and become a co-developer for development of the subject property. The Petitioner submits that since the Respondent now has

no existing development right, the agreement between the parties, i.e. the Petitioner and the Respondent herein, for co-development cannot be performed or implemented and has become impossible of performance. Considering now that the reliefs sought in the present petition have become infructuous in view of these intervening facts, the Petitioner prays for leave to withdraw the petition with liberty to adopt appropriate proceedings.

3 Learned Counsel for the Respondent does not oppose withdrawal *per se* but objects to any liberty being granted to the Petitioner. Learned Counsel submits that considering that the Petitioner has now placed before the court a new set of facts, which *inter alia* contain serious allegations in the nature of fraud against the Respondent, the Respondent must, at any rate, be given liberty to state its case *vis-a-vis* the alleged facts.

4 Considering the controversy before the court and the application today made by the Petitioner, this court is of the view that it is not necessary to allow the Respondent to deal with the facts alleged in the new affidavit. The affidavit is filed only to indicate subsequent developments in the matter, which prompt the Petitioner to seek withdrawal of the petition with liberty. Even if this court were to allow the Petitioner to do so, that does not imply that the truth or correctness of the facts before the court for this application is accepted by the court. The court notices that the Respondent does not admit any of the allegations contained in the affidavit filed by the Petitioner today. At the same time, these facts, which are nothing but the Petitioner's own point of view, can be said to form the background in which the present application is made by

the Petitioner. In the face of these alleged facts, if the Petitioner were to withdraw the petition with liberty to seek an appropriate remedy before an appropriate forum, there is nothing wrong in it so long as all rights and contentions of the parties in that behalf are kept open.

5 In the premises, the Petitioner is permitted to withdraw the petition with liberty as prayed for. The petition is disposed of in these terms.

6 The Advocates of the Petitioner may file their vakalatnama in the petition within one week from today.

7 In view of the disposal of the arbitration petition, the notice of motion does not survive and the same is also disposed of.

(S.C. GUPTE, J.)