

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER ST. NO. 11825 OF 2019
WITH
CIVIL APPLICATION ST. NO. 11826 OF 2019
IN
APPEAL FROM ORDER ST. NO. 11825 OF 2019**

Viva Ssakash Developers Pvt. Ltd.	..Appellant (Org.Plaintiff)
vs.	
Dahisar Ganga Jamuna Co-operative Housing Society Limited & ors.	..Respondents (Org. Defendants)

....
Mr. V.S. Kapse i/b. Fast Track Legal for appellant.
Mr. Jeetendra Kumar Damani for respondents.

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CORAM : M.S.KARNIK, J.

DATE : 24th JULY, 2019

P.C. :

Heard learned counsel Shri Kapse appearing on behalf of the appellant and learned counsel Shri Damani appearing on behalf of the respondents.

2. The appellant is the original plaintiff. The respondents are the original defendants. The plaintiff entered into an agreement of redevelopment with defendant No.1 on

2/1/2012. As no development activity progressed, the society terminated the development agreement on 25th September, 2016. It is the contention of learned counsel for the appellant that in the Annual General Meeting held on 25th September, 2016 a decision was taken to terminate the development agreement. However, no notice of its meeting was ever given to the appellant. He would submit that the tender process for appointment of another developer has already started. He would further submit that the trial Judge has not taken into consideration the submissions advanced on behalf of the society and there is no valid reason for the society to have terminated the development agreement. He would further submit that I.O.D. was issued on 23rd December, 2015.

3. Learned counsel for respondent No.1 invited my attention to the notice dated 20/10/2016 which is at page 254 of the paper-book informing the appellant the resolution of the society terminating the development agreement. Further by an advocate's notice dated 16th January, 2018 the society informed

the appellant about failure on their part in complying with the basic requirement of the contract and poor performance and negligence in completing the project. He also invited my attention to the public notice dated 21st March, 2018 which is at page 268 of the paper-book.

4. Considering these circumstances, *prima facie* it appears that the appellant had adequate notice about the termination of the development agreement. It appears that the suit was filed only in May, 2018 and thereafter the application was moved for grant of ad-interim reliefs.

5. Considering these circumstances, in my opinion, the view of the trial Court that the appellant can always be compensated if the development agreement is terminated illegally by respondent No.1 cannot be faulted. I do not find any reason to interfere with the order passed by the trial Court refusing ad-interim relief. However, the trial Court is requested to decide the Notice of Motion itself expeditiously and within a period of 10 weeks from today.

6. The trial Court to consider the Notice of Motion on its own merits without being influenced by any of the observations made in the impugned order or made by me while deciding this Appeal from Order. The Appeal from Order is rejected.

7. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)