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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 636 OF 2019
IN
SPECIAL (COMMERCIAL) CIVIL SUIT NO.10 OF 2018
WITH
CIVIL APPLICATION NO. 720 OF 2019

M/s. Darode Jog Redevelopment Pvt. Ltd. ..Appellant

Vs.

1. Bharatshree Cooperative Housing Society & anr. .. Respondents

Mr. Chetan Patil for appellant.
None for respondents.

CORAM: PRADEEP NANDRAJOG, CJ. &
N. M. JAMDAR, J.

JUNE 24, 2019.

P.C.

1. The appellant is aggrieved by an order vacating the order dated 15.03.2018 requiring status quo to be maintained and dismissing the application seeking stay of invocation of the bank guarantees issued by the second defendant at the behest of the

appellant, who was the plaintiff, in favour of the first respondent, who was the defendant no.1 in the suit.

2. It is settled law that unconditional bank guarantees can be stayed only upon establishing irretrievable injustice or a fraud of an egregious nature. Some judgments have carved out a third exception of a special equity, but the same has been clarified to mean a situation contemplated akin to irretrievable injustice.

3. In the instant case, invocation of the bank guarantees was sought to be injuncted on the ground of fraud.

4. A perusal of the plaint would show that the case of the appellant was that it entered into a development agreement with the first respondent because the flats, being old, required reconstruction. The Co-operative Society passed a resolution on 20.03.2012 accepting the tender of the appellant. The appellant furnished Bank Guarantees totaling ₹ 10 Crores. It is pleaded that one member of the Society did not hand over possession of his flat and thus the Society was in breach of its obligation under the agreement to hand over vacant possession of all flats. This delayed the commencement of construction. It is pleaded that the appellant had to negotiate with the said member and purchase his

flat at an exorbitant cost. This took place on 21.10.2014.

5. It is pleaded that on account of change in law, regarding transferable development rights, the appellant lost on the expected profits. It is pleaded that since the year 2014 on account of recession and agitation in Maharashtra, promoters were facing problems in housing projects. It is pleaded that on 16.03.2017 a supplementary agreement was executed. The bank guarantees were furnished afresh.

6. Relevance of aforesaid facts is that events prior to 16.03.2017 were condoned by both sides.

7. As per the plaint, in terms of the supplementary agreement executed in March 2017, the work had to be completed by February 2018. It is pleaded that on account of an oral agreement, the completion period was extended till 31.12.2018.

8. Suffice it to state there is no proof of any such oral understanding.

9. The position, therefore, would be that as per the supplementary agreement dated 16.03.2017, the bank guarantees which were renewed on 17.03.2017 would become enforceable if the project was not completed by February 2018.

10. Whether or not there is an oral agreement would require evidence to be led and the remedy of the appellant is to sue for damages. Only if fraud of an egregious nature is *prima facie* established the enforcement of the unconditional bank guarantees be restrained.

11. No such fraud emerges. We find no infirmity in the impugned order and thus dismiss the appeal in limine.

12. Civil Application No. 720 of 2019 does not survive and is disposed of.

N. M. JAMDAR, J. **CHIEF JUSTICE**