

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1476 OF 2017

Smt. Smita Vaman Patkar .. Petitioners
vs.
Shanta Mangesh Developers
Pvt. Ltd. and ors. .. Respondents

Mr. Anil R. Mishra for the Petitioners.
Mr. Y.K. Deshpande for Respondent No.1.
Mr. R.V. Sankpal I/b. R.V. Sankpal and Associates for
Respondent No.2.
Ms Sanjukta Chaudhari for Respondent Nos.3 and 4.

CORAM : M. S. SONAK, J.
DATE : 20 MARCH 2019.

ORAL JUDGMENT:-

1] Heard Mr. A.R. Mishra, learned counsel for the petitioners and Mr.Yogesh Deshpande, learned counsel for respondent No.1, Mr. R.V. Sankpal for respondent No.2 and Ms Sanjukta Chaudhari, learned counsel for respondent Nos.3 and 4.

2] Rule. Rule is made returnable forthwith, with the consent of and at the request of learned counsel for the parties.

3] The challenge in this petition is to the order dated 2nd May 2016 made by the learned Trial Judge, the operative

portion of which reads thus:

- “1. Plaintiff is directed to value the relief introduced by the plaintiff in amended prayer clause (a-1) as per provisions of Bombay Court Fees Act, 1959.*
- 2. Accordingly, the valuation is to be inserted by way of amendment to the plaint.*
- 3. Accordingly, notice of motion is allowed and disposed of.”*

4] Prayer clause (a-1), as per amended plaint reads as follows:

“(a-1) That this Hon’ble Court be pleased to declare that the alleged booking done by the defendant No.1 in respect of suit flat with defendant No.3 and 4 is illegal, unlawful and not binding upon the plaintiffs.”

5] Admittedly, the petitioners – plaintiffs were not party to the transaction between defendant No.1 and defendant Nos.3 and 4. Therefore, the reasoning of learned Trial Judge that the said relief had to be valued under section 6(iv) (ha) of Bombay Fees Act, 1959 is not tenable. The petitioners – plaintiffs have merely sought a declaration to the effect that the transaction between defendant Nos.1 and 4 is illegal, unlawful and not binding on the plaintiffs. Further, this is a case where the petitioners seek execution of agreement in respect of suit flat in terms of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale,

Management and Transfer) Act, 1963. Therefore, it cannot be said that there was anything illegal with the valuation done by the petitioners.

6] The impugned order is therefore, set aside. Rule is made absolute.

7] Learned counsel for the petitioners points out that pending this petition, the petitioners, without prejudice, had complied with the directions made in the impugned order, so that further progress in the suit is not delayed. Now that the impugned order is set aside, the petitioners are directed to amend the plaint and restore the original valuation. The petitioners are also held entitled to refund the additional Court Fees paid by him. Therefore, if the petitioners make appropriate application before the appropriate authority for refund, the same are to be considered and granted on the basis of this order.

8] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

9] Since the suit is of the year 2008, the learned Trial Judge is directed to dispose of the same as expeditiously as possible and in any case within a period of one year from today.

10] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)