

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

**CIVIL APPLICATION NO.1039 OF 2018
IN
APPEAL FROM ORDER NO.457 OF 2012
WITH
CIVIL APPLICATION NO.1040 OF 2018
IN
APPEAL FROM ORDER NO.466 OF 2012**

Hemant Yeshwant Nadgaonkar and
Ors.

...Applicants

Versus

Mangalprabhat Gumanlal Lodha and
Ors.

...Respondents

.....

Mr. Rahul Singh with Ms Pranali Raut I/b. M/s. Legal Catalyst for the
Applicants.

Mr. Cyrus Ardeshir with Ms Prachi Dhanani I/b. M/s. Veritar Legal for
the Respondent No.3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 1st MARCH, 2019.

P.C.:-

Heard. By application No.1039 of 2018, the Applicants
have sought following reliefs:-

- (a) That the Appeal from Order No.457 of 2012 be restored to the file;
- (b) The Applicant be permitted to withdraw his consent reflected in Order dated 06.07.2012 and thereby set aside Order dated 06.07.2012;
- (c) The Appeal from Order No.457 of 2012 be dismissed on merits by this Hon'ble Court;
- (d)
- (e) Cost of this Application be awarded to the

Applicants.

- (f) Any other relief/s be granted in favour of the Applicants in the circumstances deem fit and proper and in interest of justice.”

2. By application No.1040 of 2018, the Applicants have sought following reliefs:-

- (a) That the Appeal from Order No.466 of 2012 be restored to the file;
- (b) That the consent order dated 06.07.2012 passed in Appeal from order No.466/2012 and 457/2012 be modified to the extent that Respondents be restrained from creating any rights, or interest to third parties in the residual part of suit property until the disposal of Original Special Civil Suit No.355 of 2011.
- (c)
- (d)
- (e)
- (f)
- (g) Costs of this application be awarded to the Applicants.
- (h) Any other relief/s be granted in favour of the Applicants in the circumstances deem fit and proper and in interest of justice.”

3. The Applicants herein were the Plaintiffs in Special Civil Suit No.355 of 2011. They had filed an application (Exhibit-5) to restrain the Respondent No.1 (Defendant No.3) from developing the suit property and /or transferring and /or alienating the suit property. The said application was partly allowed by order dated 21/3/2012 whereby the Respondent No.1 was restrained from creating third party right until disposal of the suit. Aggrieved by the said order, the Defendant

No.3 preferred an appeal No.457 of 2012 whereas aggrieved by the rejection of the prayer viz. to restrain Respondent from carrying out developments and /or consuming any FSI/TDR of the suit property the Plaintiffs filed an appeal bearing No.466 of 2012.

4. The parties arrived at an amicable settlement and both these appeals came to be disposed of in terms of minutes of order dated 06/07/2012. Clause (b) and (c) of the minutes of the order read thus:-

“ (b) The Appellant states that the Appellant shall set out the clause reproduced hereinbelow in all the agreements for sale hereafter entered into in respect of the unsold flats/units situated on the suit property :-

"The Purchaser/Lessee/Licensee is aware that one Yeshwant Nadgaonkar and Ors. have file a suit being Suit No.355 of 2011 in the Court of Sr. Civil Judge, Thane District and inter alia claimed to be entitled to a portion of the said property. The Purchasers and/or their successors-in-interest are aware that the sale of the premises is and shall be subject to the outcome of the aforesaid suit and the Purchasers and/or their successor-in-interest shall be bound by the final orders passed therein. The purchasers and/or their Successor-in-interest shall not claim any equities in this regard. "

(c) The Appellant shall intimate to the proposed purchaser of the unsold flats/units located on the suit property, the above clause by way of letter and shall obtain the acknowledgment of the proposed purchaser on the same. ”

5. The learned counsel for the Applicants submits that the

Respondent was required to intimate clause (c) to the proposed purchasers by issuing individual letters and obtain their acknowledgments on the same. The Applicants are seeking to set aside the order dated 06/07/2012 on the ground that the defendants / respondents have not complied with clause (c) of the said order.

6. The Respondents have stated that all the proposed purchasers have been intimated about the said clause and that they have acknowledged the same in the application form which has been duly signed by them. The respondent has placed on record one of the such specimen forms at page 157. Clause 6.1 of the said form reads thus :-

“6.1 The Applicant is aware that while some of the permissions for development of the Project have been obtained, the Company is yet to obtain certain other approvals/permissions from the concerned government/administrative authorities. The allotment of the Unit, if any, hereunder, shall be upon and subject to such approvals/permissions being obtained by the Company and the terms and conditions imposed in that regard. The Applicant agrees to abide by the terms and conditions of such approvals/permissions. The Applicant is aware that one Yeshwant Nadgaonkar and others have filed a Suit being Suit No.355 of 2011 in the Court of Sr. Civil Judge, Thane District and inter alia claimed to be entitled to a portion of the said property referred herein. The Applicant is aware that the sale of any Unit in this building is and shall be subject to the outcome of the aforesaid Suit and in case the Applicant purchase any unit herein then he/she/it shall be bound by the final orders passed in this case and he/she/it shall not claim any equities in this regard. It is clarified that there is no bar or prohibition on the sale of the

Unit, subject to the aforesaid disclosure.”

7. The Respondents have also placed on record copy of the agreement entered with proposed purchasers. Clause (q) of the said agreement reads thus:-

“q. The Purchaser is aware that one Yeshwant Nadgaonkar and others have filed a Suit being Suit No.355 of 2011 in the Court of Sr. Civil Judge, Thane District and inter alia claimed to be entitled to a portion of the said Property. The Purchaser and /or their Successors-in-interest are aware that the sale of the Unit is and shall be subject to the outcome of the aforesaid Suit and the Purchaser and/or their successors-in-interest shall be bound by the final orders passed therein. The Purchaser and/or their Successors-in-interest also shall not claim any equities in this regard.”

8. The records thus indicate that the Respondents have intimated to the proposed purchasers about pendency of the suit filed by Yeshwant Nangaonkar and that the sale of the premises is subject to the outcome of the said suit. The purchasers have also acknowledged that the sale of the unit is and shall be subject to the outcome of the suit and that they shall be bound by the final outcome and will not claim any equity in this regard. There is thus no merit in the contention that the respondents have not complied with clause (c) of the minutes of order dated 06/07/2012.

9. It is also to be noted that the Appeals were disposed of in the

year 2012 on the basis of the minutes of order dated 06/07/2012. The present applications are filed about 6/7 years after the disposal of the Appeals and that too after the parties have acted on the terms. The records also indicate that between the year 2012-2013, the Applicants herein had filed several applications. One of such applications was contempt petition filed before the Trial Court alleging that the Respondents had not displayed the board as required under the minutes of the order dated 6/7/2012. The said application was dismissed by the Trial Court. The Writ Petition No.11211 of 2012 was filed before this Court by the Applicants for non compliance of the minutes of the order dated 6/7/2012. Said Petition was also dismissed by this Court on 25/6/2013. The Contempt Petition No.7 of 2013 filed by the Applicants on similar grounds has also been dismissed. Another application was filed under Order XXXIX Rule 11 of the Code of Civil Procedure for striking off the defence of Respondent No.3 for non compliance of the consent minutes of order. The said application has also been dismissed vide order dated 25/9/2018.

10. It is thus seen that since the year 2012 to 2019, the Applicants have been attempting to get the order set aside on one pretext or the other. The Applications under consideration have been filed with a

similar object. The applicants having failed to prove breach of clause (c) of minutes of order dated 6/7/2012, the applications are liable to be dismissed.

11. Under the circumstances and in view of discussion supra, both the applications are hereby dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)