

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

**APPEAL FROM ORDER NO. 26 OF 2019
WITH
CIVIL APPLICATION NO. 30 OF 2019**

M/s.Prithvi Property Developers
Through its partners

Madhav Ramesh Kode & Ors. ... Appellants

V/s.

Somari Jayram Patil & Anr. ... Respondents

**WITH
APPEAL FROM ORDER NO. 27 OF 2019
WITH
CIVIL APPLICATION NO. 31 OF 2019**

Binit Praful Shah
Through COA

Vinit Pramodkumar Goyal ... Appellant

V/s.

Somari Jayram Patil & Ors. ... Respondents

- Mr.Sandesh Patil i/b. Mr.Prithviraj S. Gole for the Appellants in AO/26/2019 and for Respondent Nos.2 to 5 in AO/27/2019.
- Mr.Pradeep J. Thorat for Respondent No.1 in both matters.
- Mr.Prasad S. Dani, Senior Advocate i/b. Mr.Kiran Bhagat for Respondent No.2 in AP/26/2019 and for the Appellant in AO/27/2019.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th JANUARY, 2019.

P.C. :

1] Heard learned counsel for both the parties in both the Appeals.

2] Perused the two separate impugned orders passed by the trial Court on 12/12/2018 in Spl. C. S. No.57/2016 .

3] The order passed below the Application at Exhibit-72 is the impugned order in Appeal from Order No.26 of 2019, which reads as follows:

- “1. The application is allowed as follows:*
- 2. Defendant Nos.2 to 5 are hereby prevented/ restrained from alienating the tenements and creating any third party interest in the buildings under construction on suit property till disposal of the suit.*
- 3. Costs in cause.”*

4] Whereas, the order passed below the Application at Exhibit-31 is the impugned order in Appeal from Order No.27 of 2019, which reads as follows:

- “1. The application is allowed as follows:*
- 2. Defendant No.1 and/or persons on behalf of him are temporarily restrained from alienating the suit property and creating third party interest in buildings under construction on it, till disposal of suit.*
- 3. The charge of Rs.2,12,00,000/- is created upon suit*

- property (i.e. amount of balance price Rs.1,32,50,000/- plus interest of six years @ 10% p.a. on it from 27/05/2013) till disposal of the suit.*
- 4. All the concern Revenue and Public authorities and officials are directed to take note of charge of above amount in the relevant record of suit property.*
 - 5. Issue letters to District Collector, Palghar and all concern authorities accordingly.*
 - 6. Costs in cause.”*

5] Learned counsel for the Appellants in both the Appeals fairly concede that the Appellants in both the Appeals are ready to deposit the amount of Rs.2,12,00,000/- as directed by the trial Court while creating the charge on the suit property, without prejudice to their rights and contentions.

6] In view thereof, learned counsel for Respondent No.1 submits that Respondent No.1 may be permitted to withdraw the admitted amount of Rs.57,50,000/- from the amount to be deposited by the Appellants in both the Appeals in the trial Court.

7] Accordingly, both the Appeals are allowed. The impugned orders passed by the trial Court are set-aside, subject to condition that the Appellants in both the Appeals would deposit the amount of

Rs.2,12,00,000/- in the trial Court within a period of one week from today. On deposit of the said amount, Respondent No.1 is permitted to withdraw Rs.57,50,000/- without any surety.

8] Both the Appeals along with Civil Applications stand disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]