

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO. 148 OF 2019

IN

NOTICE OF MOTION NO. 37 OF 2017

IN

SUIT NO. 2547 OF 2010

WITH

NOTICE OF MOTION (L) NO. 333 OF 2019

IN

APPEAL (L) NO. 148 OF 2019

Sailee Developers & ors.

...Appellants

Versus

Prathamesh Galaxy Members Welfare
Association (Regd.) and ors.

...Respondents

Mr. Anil Anturkar, Senior Advocate, a/w Mr. Vikramjit
Garewal, I/b Sachin A. Mhatre, for the Appellant.

Mr. Kevic Setalwad, Senior Advocate, a/w Mrs. Sneha
Prabha, Arsh Mishra & Heena Shaikh, I/b M. V. Kini,
for the Respondent nos 1 to 4/Original Plaintiffs.

Mr. Ruchir L. Tolat, I/b M/s. L. C. Tolat & Co., for
Respondent nos.5, 8 & 13.

Ms. Shachi Udeshi, I/b Wadia Ghandy & Co., for
Respondent no.16.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

DATED: 26th March, 2019

ORAL ORDER:-

1. Heard Mr. Anturkar, the learned Senior Counsel for the Appellant, Mr. Setalwad, the learned Senior Counsel for Respondent nos.1 to 4, Mr. Tolat, the learned Counsel for Respondent nos.5, 8 and 13 and Ms. Udeshi, the learned Counsel for Respondent no.16.

2. Notice of Motion No.37 of 2017 in Suit No.2547 of 2010 has been presented by the original Plaintiffs – Respondent nos.1 to 4 herein, Prathamesh Galaxy Members Welfare Association, for praying following reliefs:

“(a) That this Hon'ble Court may be pleased to direct the Defendant Nos.1 to 4 to pay to the Plaintiffs and its members who have purchased residential flats, monthly rent @ Rs.150/- per sq. feet from the date of the suit i.e. 27.08.2010 or from 13.10.2014 (the date on which the suit has been stayed), as the Hon'ble Court be pleased to consider:-

(b) That this Hon'ble Court be pleased to direct the Court Receiver, High Court Bombay to appoint the Plaintiffs' members who have purchased shops, as Agents without security or royalty in respect of their respective shops as per agreement/Allotments.”

3. The learned Single Judge of this Court while considering the Notice of Motion has passed the following order on 22nd February, 2019:

6) Having heard learned counsel for the applicant-plaintiff and having perused the record and the affidavit, it is clear that defendant No.1 has actually cheated the members of plaintiff association inasmuch as since last 15 years despite the applicants having entered into agreement and having paid substantial amounts to defendant No.1, for purchase of the flats/premises that is in or about 2001-2002, the construction of the building has stopped for last so many years. The plaintiffs are deprived of their legitimate rights to have possession of their respective tenements. It is not in dispute that the construction of the building has not progressed since year 2010.

7) Considering the aforesaid documents and the plight of the members of the plaintiffs, at this stage it would be appropriate and eminently in the interest of justice that the statement as made on behalf of defendant no.1 in the affidavit dated 09.01.2017 of Mr. William J. Mani that defendant no.1 is willing to make payment of monies

along with interest, needs to be accepted, and taken to its logical conclusion.

8) Thus, while adjourning the hearing of this Notice of Motion, the defendant No.1 is directed to deposit, in this Court, the monies received by defendant no.1 from the members of applicant-plaintiff alongwith interest at the rate of 9% per annum from the date of receipt of monies till 30th January, 2019 as per defendant No.1's own statement in the said affidavit. Ordered accordingly.

9) Let the amount be deposited by respondent no.1 within four weeks.

10) Place this Notice of Motion for hearing on 22.03.2019.”

4. Notice of Motion No.37 of 2017 was again taken up for consideration on 22nd March, 2019 before the learned Single Judge. Since the original Respondents – Appellants herein failed to comply with the time frame in respect of deposit of the amount, while dealing with the Notice of Motion, the learned Single Judge has passed the following order:

“3. The time to deposit is extended upto and including 26th March, 2019. This is without prejudice to applicants' rights and contentions. If by 26th March, 2019 the amount is not deposited, the interest payable will be 18% p.a. against 9% p.a. which has been granted on 22nd February, 2019.

4. Stand over to 29th March, 2019 for directions.”

5. The Appellant is raising exception to the orders passed by the learned Single Judge on 22nd February, 2019 as well as 22nd March, 2019. The contentions raised by the respective parties that is the Appellants herein while objecting the order passed during the pendency of the Notice of Motion and

subsequent order dated 22nd March, 2019, as well as the contentions raised by Respondent nos.1 to 4 – original Plaintiffs as regards the maintainability of the appeal, need not be gone into at this stage since the Notice of Motion No.37 of 2017 is yet kept pending and has not been disposed of. The learned Single Judge while issuing order on 22nd February, 2019 in Notice of Motion No.37 of 2017 has specifically issued direction in paragraph no.9 to place the Notice of Motion for hearing on 22nd March, 2019. The prayers recorded in the Notice of Motion have not yet been considered by the learned Single Judge and during the pendency of the Notice of Motion, impugned order has been passed on 22nd February, 2019.

6. The learned Counsel for the Appellants contend that neither his contentions have been considered nor he has been heard while issuing order on 22nd February, 2019.

7. The learned Counsel for the Respondent nos.1 to 4 – original Plaintiffs does not agree with the submissions and controvert the same.

8. It would not be necessary at this stage to consider disputed contentions raised in this regard since Notice of Motion No.37 of 2017 is yet kept pending and during the pendency and disposal of the said Notice of Motion at an

interim stage, the order has been issued on 22nd February, 2019. The learned Single Judge while considering the prayers in Notice of Motion No.37 of 2017 after extending an opportunity of hearing to all the parties concerned, may take into account the arguments with respect to the orders dated 22nd February, 2019 and 22nd March, 2019. In substance, while dealing with the prayers in Notice of Motion No.37 of 2017, all relevant aspects are open for consideration for the learned Single Judge and appropriate order is expected to be passed. In view of this, it would not be necessary to go into the aspect of correctness of the orders passed by the learned Single Judge on 22nd February, 2019 and 22nd March, 2019, since these orders have been issued during the pendency of the Notice of Motion No.37 of 2017.

9. In view of the observations as recorded above, the instant Appeal stands disposed of.

10. In view of disposal of the Appeal, Notice of Motion No.333 of 2019 does not survive and is accordingly disposed of.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]