

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL APPELLATE DIVISION**

**COMMERCIAL APPEAL NO.334 OF 2019
IN
NOTICE OF MOTION NO.1154 OF 2019
IN
COMMERCIAL SUIT NO.633 OF 2019**

Nisar Properties Private Limited ..Appellant
Versus

Jogeshwari Friends Co-operative Housing
Society Limited and others ..Respondents

Mr. Zubin Behramkamdin a/w Mr. Vyom Shah, Ms. Manisha Virkhare & Mr. Anagh Pradhan I/by Divya Shah Associates, Advocates for the Appellant.

Mr. Ajay Panicker a/w Rashi Agarwal I/by Ajay Law Associates, Advocates for the Respondent No.1.

Mr. Chetan B. Raithatha, Advocate for Respondent No.2.

**CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.**

DATE : 10th JULY, 2019

P.C.

1] The Appeal is listed for preliminary hearing today at admission board. Counsel as above appeared for the Respondents and states that the Appeal could be heard finally and disposed of today itself.

2] Challenge in the appeal is to an order dated 30th April 2019 passed in Notice of Motion No.1154 of 2019 in Commercial Suit No.633 of 2019.

3] We note the bare minimum facts to decide on the legality of the impugned order lest parties are prejudiced before the learned Single Judge either in the disposal of the Notice of Motion No.1154 of 2019 or the suit.

4] Of course, the suit would be decided as required by law.

5] The Appellant is the Plaintiff and seeks specific performance of a development agreement entered into between the Appellant and the 1st Respondent.

6] The 2nd Respondent was the owner of a large chunk of land. A portion thereof was assigned by it to Respondent No.1 on which 17 residential flats and 6 commercial shops were constructed and allotted to 23 members of the Respondent No.1. The said Respondent decided to redevelop the property and entered into a redevelopment agreement with the Appellant.

7] An issue of utilizable FSI arose in the context of a strip of land made available by the 2nd Respondent to the Corporation.

8] We are not noting rival version of the parties on said

aspect because it is not warranted at this stage.

9] In the Notice of Motion No.1154 of 2019 filed along with the suit, the Appellant sought an interim injunction restraining the 1st Respondent from terminating the agreement and mandatory injunction requiring Respondent No.2 to provide details and plans from which FSI could be determined.

10] The agreement between the Applicant and the 1st Respondent requires the Appellant to pay, what is popularly called in the city of Mumbai as transit rent. The transit being agreed amount payable to the members of the 1st Respondent to take on rent alternative properties till pursuant to the development reconstruction is effected and the members are given possession of the respective flat or their shop.

11] In the impugned order, the learned Single Judge while declining ad-interim relief as prayed for has directed that the application seeking interim relief till disposal of the suit shall be taken up for consideration only after the Appellant deposits the entire outstanding transit rent due from August 2017.

12] Suffice it to state that grant or refusal of interim injunction is on the three guiding principles enunciated in Rule 1 of Order XXXIX of the Code of Civil Procedure. Namely: i) Prima facie case established by the Plaintiff ii) Balance of convenience; and iii)

Irreparable injury.

13] Thus, the learned Single Judge could not have put any condition to consider the Notice of Motion seeking interim relief filed by the Appellant. Needless to state while considering balance of convenience the learned Single could consider what would be effect of the Appellant not paying the transit rent. But, this would one of the factors to be taken into account while deciding on the issue of balance of convenience. It would have a bearing on prima facie case and irreparable injury as well.

14] We dispose of the Appeal setting aside the condition imposed by the learned Single Judge in the order dated 30th April 2019 that Notice of Motion No.1154 of 2019 shall be taken up for consideration only when the Appellant deposits the entire outstanding rent and alternative accommodation rent.

15] We direct the learned Single Judge to decide the Notice of Motion No.1154 of 2019 as required on the well-known principles enshrined Rule 1 of Order XXXIX of the Code of Civil Procedure.

N. M. JAMDAR, J

CHIEF JUSTICE