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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 442 OF 2018
IN
COMPANY PETITION NO. 952 OF 2014

Barot Real Estate LLP ...Applicant
In the matter between
Jain Nagin Fulchand ...Petitioner
Versus
Mantri Realty Ltd & Anr ...Respondents

Mr Kunal Dwarkadas, *with Mr Nilesh Modi & Rachit Thakar, i/b Rustamji & Ginwala, for the Applicant.*
Mr Devendra Tiwari, *i/b Law Chamber of Siddharth Murarka, for Petitioner in Company Petition No. 949 of 2014.*
Ms Achala Hatode, *i/b SK Jain & Associates, for the Petitioner in Company Petition No. 952 of 2014.*
Mr Rahul Karnik, *for ex-director.*

CORAM: G.S. PATEL, J
DATED: 11th January 2019

PC:-

1. This is an application by a third party, Barot Real Estate LLP ("**BREL**") seeking a direction to the escrow agents M/s Kanga & Company to release certain title documents that are lying with them pursuant to a Development Agreement of a property at Chowpatty. The escrow document is at page 71 and is dated 26th September

2008. It refers to a Development Agreement dated 21st April 2008. The property in question is a plot of land with a structure on it, Cadastral Survey No. 1514 of Girgaum Division at Chowpatty Mumbai 400 007.

2. The reason for the escrow arrangement is that under the Development Agreement, Mantri Realty Limited ("**MRL**"), of which a provisional liquidator has since been appointed, agreed to redevelop the property. The clauses of that agreement required that tenants be moved out, the property be redeveloped and then MRL was entitled to sell a portion or some of the premises in the reconstructed building on ownership basis. It was then obliged to form a society and the usual terms of redevelopment were then incorporated. The document itself recites that there was a previous Development Agreement under which the owners, the Barot family, had received an aggregate non-refundable consideration of Rs. 37.50 lakhs from a previous developer. This was adjusted. MRL paid to each set of title holders (to the front and rear portions) of the Chowpatty property an amount of Rs.5 lakhs and this was specifically stated to be non-refundable. This is important because this amount of Rs. 5 lakhs cannot clearly be shown as an asset of MRL of which the provisional liquidator can take charge. It cannot be shown as a liability of the Barot family. It was expressly stated to be non-refundable.

3. Apart from making this payment MRL did absolutely nothing. The LLP is formed by persons of the Barot family who are the heirs and legal representatives including *inter alia* under Probates issued by this Court of some or all of the original title holders of the front and rear portions of the Chowpatty property.

4. The escrow document at page 71 references certain clauses and makes it clear that the documents were to be handed over either on termination or on completion and on a joint request being made by the Barot title holders and family (which would include their successors in title) and MRL. The agreement itself has been terminated by a letter dated 18th October 2016, a copy of which is at page 107, Exhibit "J". The only response from the directors is to say that the company is in liquidation and the Official Liquidator should be contacted (page 114). When the Applicant's Advocate asked for the title documents to be returned by the escrow agents, M/s Kanga and Company, the escrow agents quite correctly said that an order of the Court would be necessary. Hence this application.

5. There is an argument attempted on behalf of the ex-directors that the termination is improper and that the agreement is still valid, subsisting and binding. It is submitted that the tenants were vacated only in 2015 and the property is leasehold and the necessary permissions have not been obtained. None of this is even remotely persuasive. MRL and its directors did absolutely nothing to either file a suit or make a claim against the original title owners. They have simply sat by. The property is not an asset of MRL. Even under the Development Agreement MRL acquired no title to the property. The only reason for the escrow arrangement was the provision in the Development Agreement for what was to happen after reconstruction was completed and evidently to facilitate the sale of flats to third parties, the formation of a society etc. None of this would give MRL any kind of right, title or interest in the immovable property in question. In fact the submission is countered by saying that even till date the tenants have not been shifted and are very much in occupation of their respective premises. Far from assisting MRL, this justifies the present demand.

6. The only other consideration be weighed is the contention of the original Petitioner. That claim is a money claim against MRL. This is also true of the Petitioner in Company Petition No. 949 of 2014. Both Petitioning Creditors are unsecured creditors. They cannot have any right, title, interest or claim in any particular asset of MRL and the property in question is not even an asset of MRL. The Chowpatty property is completely beyond the reach of any individual unsecured creditor. Their rights *vis-à-vis* MRL are unaffected and are no way compromised by the grant of relief in the Company Application.

7. Having regard to these circumstances the Company Application is made absolute in terms of prayer clause (a). No costs.

8. M/s Kanga and Company is requested to release the documents to the Applicant upon production of an authenticated copy of this order.

(G. S. PATEL, J)