

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1 OF 2019

IN

SUITS NO. 2589 OF 2012

Manjula Rohindas Wadekar & Anr. ...Applicants

IN THE MATTER BETWEEN

Mantri Corner CHS Ltd. ...Plaintiff

Versus

National (India) Contractors And Engineers And Ors. ...Defendants

ORIX Leasing & Financial Services India Ltd. & Anr. ...Respondents

Ms.Rajalakshmy Mohandas with Ms.Pooja Shinde and Athira Rajeev i/b.
Rajalakshmy Associates, for the Applicants.

Mr.Sanjeel Kadam with Sayli Rajpurkar i/b. Kadam & Co., for the Plaintiff.

Mr.Sanjay Jain with Sumeet Bansod i/b. L.J.Law, for Defendant nos.1 to 3.

Mr.Sagar Patil, for MCGM.

Mr.Vishal Maheshwari i/b. V.M.Legal, for Respondent no.2.

CORAM : G.S. KULKARNI, J.**DATE : 8 January 2020****PC.:**

1. Heard Ms.Rajalakshmy, learned Counsel for the applicants and Mr.Maheshwari, learned Counsel for Respondent no.2 and Mr.Jain, learned Counsel for defendant nos.1 to 3.

2. The dispute in the suit is principally between the plaintiff-society and defendant nos. 1 to 3. The applicants are the members of the society and are not parties to the suit. On 22 February 2016 this Court in notice of Motion no.315 of 2013, passed the following order:-

“1. Pursuant to the order passed by this Court dated 17-02-2016, Mr.Liladhar Sawant, from M/s.Orix Leasing and Financial Services India Ltd., is present in Court. He has produced Original Agreement dated 08-04-1982 executed by National (India) Contractors and Engineers and Mr.Rohidas Raghoba Wadekar. The said document is retained in Court. Photocopies of the same shall be handed over to the learned Advocates for the parties and thereafter, the same shall be sent to the Prothonotary and Senior Master for keeping the same in safe custody. The Original document shall be returned to M/s.Orix Leasing and Financial Services India Ltd. after the Suit is disposed of.”

3. Thus the applicant's document in regard to the purchase of the premises/flat in question is now in the safe custody of the Prothonotary and Senior Master of this Court.

4. In regard to this fact the applicants had approached respondent no.1-ORIX Leasing & Financial Services India Ltd. (for short 'Orix') to obtain a loan which was disbursed by Orix to the applicant. In April,2019 Orix assigned the loan in question in favour of respondent no.2-Aditya Birla Finance Ltd. The contention as urged on behalf of the applicant in this application is that respondent no.2 is insisting for the “original agreement” to be submitted to it by the applicant, which in fact was deposited in this Court by the applicant in pursuance of the order dated 22 February 2016 (supra). Applicants contend that as the applicants were unable to furnish the original document from April 2019, a penal interest of 2% is being levied by respondent no.2 on the applicant's loan. Prayers are accordingly made in the present application *inter alia* is that the agreement dated 8 April 1982 be returned to the applicants, as entered between the applicants and defendant no.1 and there are other related prayers.

5. Learned Counsel for respondent no.2-Aditya Birla Finance Ltd. states that this situation had arisen as respondent no.2 was not aware that the document was deposited in this Court in pursuance of the said order. Learned Counsel for respondent no.2 fairly states that the only reason for respondent no.2 to levy the penal interest, was for the reason that the applicants were not

furnishing the original document. He submits that on receiving a certified copy and inspection of the document, the requirement of respondent no.2 would stand satisfied.

6. After having heard the learned Counsel for the parties, it clearly appears from the order dated 22 February 2016 that the said agreement is necessary for adjudication of the disputes in the suit, hence, this Court categorically observed in the said order that the original document be returned to respondent no.1-Orix after the suit is disposed of. This order has continued to operate till date.

7. Hence, anxiety of the applicants and of respondent no.2 can be surely resolved considering the stand taken by respondent no.2.

8. The interim application is accordingly disposed of by directing the office to issue a certified copy of the agreement dated 8 April 1982 to respondent no.2-Aditya Birla Finance Ltd. as also permitting inspection of the original document. This exercise be completed within two weeks from today.

9. After the certified copy is issued and the inspection is over, the document be maintained in the safe custody of the Prothonotary & Senior Master of this Court for the purposes of the suit.

10. Learned Counsel for respondent no.2 fairly states that with effect from January,2020, the penal interest would not be charged on the applicant. The statement is accepted.

11. The original document be handed over to respondent no.2 on disposal of the suit.

12. Interim Application is disposed of in the aforesaid terms.

[G.S. KULKARNI, J.]