

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO. 1 OF 2019

IN

COMMERCIAL SUIT NO. 1194 OF 2018

Haldiram Food International Private Limited .. Applicant

In the matter between

Haldiram Food International Private Limited .. Plaintiff

Vs.

S. S. Enterprises & 6 Ors. .. Defendants

Mr. Prateek Seksaria with Komal Thadani & Shadab Jan i/b M/s. Crawford Bayley & Co. – Advocate for the applicant

Mr. Sandeep Maurya – Advocate for the defendant no. 3.

Mr. Summet Bansod i/b L. J. Law – Advocate for the defendant nos. 4, 5 and 7.

Mr. Amit Sheth – Advocate for the defendant no. 2.

Mr. Amol Shetgiri – Architect present.

CORAM : A.K. MENON, J.

DATED : 13th JANUARY, 2020.

P.C. :

1. By this interim application the applicant seeks a direction to M/s Shetgiri & Associates who were appointed by the Court on 21st August 2019 to complete the task specified in that order. Exhibit-F to the application is a copy of an Interim Technical Inspection Report dt.22nd January 2019. This report is said to have been prepared by the

aforesaid Architects pursuant to order dt.21st August 2018. The Architect is represented today in Court by Mr. Amol Shetgiri who states that original report has been filed with Court alongwith his bill of costs. The perusal of the report indicates as canvassed by Mr.Shetgiri that in order to complete the task assigned, it will be necessary that the calculations be rechecked and re-visited in order to verify availability of additional FSI, if any. This can be seen in the penultimate paragraph of the report. The request today is to direct the said architects to carry out this additional inspection and complete the task assigned to architect. In addition it is suggested as canvassed by Mr.Seksaria that an independent architect may also be nominated to accompany the Court appointed architect.

2. The application is sought to be opposed on behalf of defendants 4 to 7 on the basis that they are unaware of the report dt.22nd January 2019. The learned counsel for defendants 4 to 7 and on behalf of defendants 2 & 3 also state that they have had no occasion to see the report. The report is said to be filed in the Court. It appears that report has been collected only by the plaintiff's Advocates. The said defendants who have appeared today do not appear to have even pursued the report or even collected the copy thereof.
3. In my view there is no impediment in granting the relief sought to the limited extent that I propose to grant. On behalf of defendants nos. 4

to 7 it is contended that certain appeals have been filed which have since been disposed by order dt. 21st December 2018 which clarify previous orders passed in Commercial Appeal No.534/2018. However, on a query from the Court, the learned counsel is unable to justify the objection on the basis of the order passed by the Appeal Court. In fact the order of the Appeal Court does not in any manner deal with the effect of the order dt.21st August 2018 appointing the Architect.

4. On behalf of defendants 2 & 3 also, the learned counsel seek to oppose this application. In my view the Court had on 21st August 2018 passed clear directions to ascertain the extent of unauthorized work, if any and that order is self explanatory. The Architect is required to comply with that order. There is admittedly no challenge to the order dt. 21st August 2018 and in that view of the matter it is appropriate that said Architect be directed to complete their task, needless to mention at the cost of the plaintiff-applicant. While on the subject, it is pointed out even the earlier costs of the first visit leading to the report dt.21st January 2019 have not been paid. Let this be paid within one week from today. In the first instance, the applicant herein will bear that costs. It would be open for the applicant to seek reimbursement of the shares of the other plaintiffs, if that is permissible and subject to what the other plaintiffs have to say in the matter.
5. In my view, there is no occasion to appoint any other “independent”

Architect in contemplation of the plaintiffs. Any nominee or any of the parties cannot be said to be independent. Since Mr.Shetgiri is present in Court, he states that preparation of report would be completed within 10-12 days from the date of visit.

6. As far as the other reliefs are concerned which Mr.Seksaria seeks in terms of prayer clause (b) & (c) & (d), it will be pre-mature to consider this now since the final inspection report as contemplated in order dt.21st August 2018 is yet to be filed. Reserving the liberty to apply for such additional reliefs in terms above, this interim application can be disposed.
7. Mr.Shetgiri states that sanctioned plans are available but there has been difficulty in identifying the constructed portions and co-relating them with 'as built' structure. Mr.Shetgiri requests the assistance of the Project Architect Mr. Amit Sapre or such other firm which has been appointed as Architect of the project and who have been liasioning with the MCGM in relation to the suit project. That seems a reasonable request.
8. In the circumstances, the following order is passed;
 - (i) M/s. Shetgiri & Associates are directed to complete the task assigned to them vide order dt. 21st August 2018 and make their report in continuation of the report dt.21st January 2019, Exhibit-F to the application.

(ii) Accordingly, M/s.Shetgiri & Associates shall visit the premises on or before 18th January 2020 subject to availability of Mr.Sapre and file their reports on or before 1st February 2020. Needless to mention cost of 1st and 2nd report will be borne by the plaintiffs/applicants as aforesaid.

(iii) The project architect Mr.Sapre who was involved in project plan approval shall be requested to remain present or nominate such suitable architect from his firm to assist M/s.Shetgiri & Associates in the task assigned to them. In the event, there is any difficulty in obtaining the presence of the said project architect, liberty to apply.

(iv) With these directions, the interim application is disposed.

(A.K.MENON, J.)

L.S.Panjwani, P.S.