

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2489 OF 2018
IN
FIRST APPEAL (ST.) NO.18323 OF 2018**

Municipal Corporation of City of Pune .. Applicant/Appellant
Vs.
Indra Raje Bhairav Sinh Ghorpode & Ors. .. Respondents

Mr.Vishwanath Patil for the applicant/appellant.
Mr.P.S. Dani, Senior Advocate a/w Mr.Arun Unni Krishnan i/by
M/s.Crawford Bayley & Co. for the respondent nos.1 & 2.

CORAM : R.D.DHANUKA, J.
DATE : 4th March 2020

P.C.:

. By this civil application, the applicant seeks stay of the impugned judgment and award dated 5th October 2016 passed by the Trial Court thereby decreeing the suit filed by the respondents (original plaintiffs).

2. Trial Court directed the applicant (original defendant) to perform the agreed term in the agreement dated 23rd April 1999 and accord balance TDR i.e. 45465 sq.ft. by issuing appropriate DRC.

3. By a separate order passed by this Court, this First Appeal is already admitted.

4. Learned counsel for the applicant invited my attention to some of the clauses of the agreement entered into between the parties and would submit that under the said agreement, the applicant was liable to issue TDR only in respect of the area of the plot reconstituted under the Town Planning Scheme. He submits that after such reconstitution, whatever area is left, TDR is issued by the applicant. He submits that there was a mistake in the said agreement on the part of the applicant in not mentioning the final area after reconstitution of plot in question.

5. The applicant does not dispute that the applicant has taken possession of the entire area which was the subject matter of the said agreement admeasuring 318947 sq. ft. and not reconstituted area of the plot after finalisation of the Town Planning Scheme. Trial Court has considered this aspect and has directed the applicant to accord balance TDR to the respondents (original plaintiffs).

6. By an order dated 18th October 2019 passed by Shri Justice K.K. Tated, this Court has taken on record an additional affidavit-in-reply dated 16th October 2019 filed by the respondents showing market value of the TDR of 4223.8 sq.mtr. amounting to Rs.10,11,17,772/-.

7. Mr.Dani, learned senior counsel for the respondents, on instructions, states that the applicant cannot be granted any unconditional

stay of the impugned judgment and decree. The applicant shall be directed to issue TDR of 4223.8 sq.mtr. in favour of the respondents (original plaintiffs) for their use on the condition that the respondents would return such TDR in the event of the respondents failing in the First Appeal. The alternate submission of the learned senior counsel is that the applicant be directed to deposit an amount of Rs.10,11,17,772/- in this Court with liberty to the original plaintiffs to withdraw the said amount upon furnishing security.

9. In view of the fact that the applicant has taken physical possession of the entire plot which was subject matter of the said agreement and not the area of reconstituted plot, the applicant in this situation, cannot be allowed unconditional stay of the impugned Judgment and decree passed by the Trial Court. In my view, it would be more appropriate if the applicant is directed to deposit a sum of Rs.10,11,17,772/- in this Court within a reasonable period with liberty to the respondents to withdraw the said amount upon furnishing bank guarantee of a nationalized bank.

10. I therefore pass the following order :-

(i) Civil application is made absolute in terms of prayer clause (a) on the condition that applicant deposits a sum of Rs.10,11,17,772/- in this Court within eight weeks from today. It is made clear that no further

extension of time would be granted.

(ii) The applicant is directed to inform the factum of deposit of the amount to the respondents' advocate within two weeks from the date of such deposit. The respondents shall furnish bank guarantee of a nationalized bank within eight weeks thereafter.

(iii) If the amount is not deposited within the time prescribed, the order passed by this Court today to stand vacated without further reference to the Court.

(iv) If the amount is deposited within the time prescribed, the respondents (original plaintiffs) would be at liberty to withdraw the said amount upon furnishing bank guarantee of a nationalized guarantee which shall be kept alive during the pendency of the First Appeal and for a period of eight weeks after disposal of the First Appeal if any adverse order is passed against the respondents. Copy of the bank guarantee shall be served upon the applicant's advocate within two weeks from the date of filing of such bank guarantee with the Registry of this Court.

(v) There shall be no order as to costs.

R.D.DHANUKA, J.