

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

MISCELLANEOUS CIVIL APPLICATION NO. 6 OF 2020

Vina A. Siswawala and Ors ... Applicants

V/s.

Bhoumik Co-operative Housing Society ... Respondent
Limited and Ors.

Mr. Yogesh Rajgor I.by M/s. Legal Chartered for the applicants.

Ms. Shamima Taly a/w Mr. Aziz Shaikh a/w. Mr. Vithoba Iasurkar I.by
S. Mahomedbhai and Co. for the respondent nos. 1 and 2

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 17th FEBRUARY 2020

P.C. :

. This is an application filed under section 24 of Code of Civil Procedure seeking transfer of Civil Suit No. 175 of 2016 to the High Court for adjudication of the said suit along the suit filed in the High Court which is registered as High Court (OC) Suit No. 1190 of 2019 and Appeal from Order (Stamp) No. 29516 of 2018.

2. It appears from record that the applicant herein have filed Civil Suit No. 175 of 2016 seeking the cancellation of the development agreement which was registered in favour of the respondent. Initially, the applicant had withdrawn Special Civil Suit No. 76 of 2015 filed before the City Civil Court at Dindoshi on 8th January 2015. The

applicants herein had also filed Writ Petition No. 1346 of 2015, challenging the No Objection Certificate, which was granted for redevelopment of the suit property, the same was dismissed. The Civil Suit No. 175 of 2016 has been filed before the City Civil Court at Dindoshi. There were several Notice of Motions filed in Suit No. 175 of 2016. However, the same were dismissed by various orders. The order dated 2nd March 2016 is also challenged before this Court by filing Appeal from order No. 740 of 2016. The same was disposed of on 3rd April 2018. At present also an Appeal from order (Stamp) No. 29516 of 2018 is pending before this Court. The office objections are not removed nor there are any effective orders in the said Appeal from order. At one stage, the applicant had also applied for ex-parte ad-interim reliefs in Notice of Motion No. 2779 of 2019 and the same were refused by City Civil Court. At present it is seen that although the properties are the same and the suit property is the same the applicants herein have prayed for cancellation of development agreement which was granted in favour of respondent no.2 on 31st October 2015.

3. The learned counsel for the respondent submits that in fact except the present applicants and the respondent nos. 3 to 16 in the present application, all other occupants are ready to vacate the premises.

4. In Civil Suit No. 175 of 2016 the challenge is to the development agreement whereas in Civil Suit No. 1190 of 2019 the plaintiffs are seeking mandatory orders of vacating premises against

the applicants and the respondent nos. 3 to 16 in order to enable them to abide by the development agreement dated 31st October 2015. It is more than clear that for the past 5 years there is litigation between the parties and the respondent is not able to abide by the said agreement. Although, the intention of disapproval is granted vide order dated 10th December 2019.

5. The learned counsel for the respondents submits that the application has been filed only to protract the proceedings in the present suit filed by the defendant. It appears from the record that the present application has also been filed on 9th December 2019, there is no reason justifying the transfer of the application from the City Civil Court to the High Court as the prayers in both the suits are contrary to each other and would have a direct effect on the cause of action demonstrated by both the parties.

6. It is in view of this that the present application seeking transfer of Civil Suit No. 175 of 2016 to the High Court deserves to be dismissed. In any case, the appeal from order is still pending before the High Court, the application being sans merits stands rejected. The Civil Application is accordingly disposed of.

(SMT. SADHANA S. JADHAV, J)