

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

*Amk*

COMMERCIAL APPEAL NO. 1 OF 2020  
IN  
NOTICE OF MOTION NO. 2549 OF 2019  
IN  
COMMERCIAL SUIT NO. 1320 OF 2019  
WITH  
INTERIM APPLICATION NO. 1 OF 2019

Shriji Apartment Co-operative Housing  
Society Ltd.

.. Appellant

Vs.

Heena High-Tech Developers & Ors.

.. Respondents

Ms. Deepti Panda a/w. Mr. Farhan Khan, Mr. M. P. Vora, Ms. Ketki  
Prajapati i/b Pramodkumar & Co. for the Appellant.

Ms. Nikita Jacob a/w. Ms. Gauri Joshi, Mrs. Shital Kutwal i/b S. K. Legal  
Associates LLP for the Respondents.

**CORAM : PRADEEP NANDRAJOG, C.J. &  
SMT. BHARATI DANGRE, J.**

**DATE : 24<sup>th</sup> JANUARY, 2020.**

**P. C. :**

1. The Appellant is the Plaintiff in Commercial Suit No. 1320 of 2019. The Plaintiff had sought specific performance of a development agreement entered into between the Appellant and 1<sup>st</sup> Respondent, a partnership firm of which Respondent Nos.2 to 4 are partners.
2. The development agreement required the developer to pay transit rent in respect of 34 flats possession whereof was handed over to the developer for redevelopment. The developer has also executed a bank

guarantee for due performance of its obligation and while seeking specific performance of the development agreement, the Appellant vide Notice of Motion No. 2549 of 2019 had sought an interim measure. The interim measure was to direct the developer to deposit the transit rent which had accumulated and to make a disclosure of its assets so that the transit rent could be recovered by sale of the assets and to keep the bank guarantee alive.

3. Requiring the partnership firm and its partners to make a disclosure the learned Single Judge has directed the Notice of Motion to be removed from the board, meaning thereby hearing of the Notice of Motion gets adjourned indefinitely. The learned Single judge has taken the view that the ad-interim relief granted on 30.09.2019 would suffice.

4. The interim relief granted on 30.09.2019 is to make a disclosure of the assets.

5. Now, the disclosure of the assets would only facilitate recovery of the transit rent if not paid and therefore the interim relief granted vide order dated 30.09.2019 cannot be treated as adequate relief even at the ad-interim stage.

6. The development agreement obliges the partnership firm to pay monthly transit rent to the members of the Appellant during the subsistence of the contract and thus we dispose of the instant Appeal directing the Notice of Motion No. 2549 of 2019 not to be removed from the board of the learned Single Judge. We direct that the said Notice of Motion would be listed before the learned Single Judge on 17.02.2020. We direct the learned Single Judge to decide the prayer made in the said Notice of Motion that the 1<sup>st</sup> Respondent and its

partners be directed to deposit the transit rent which has fallen due in terms of the development agreement.

7. In view of the disposal of the Appeal, Interim Application is disposed of as infructuous.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun  
M.  
Kadam

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by Arjun M.  
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