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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION (ST.) NO.2899 OF 2020

IN

FIRST APPEAL NO.882 OF 2017

Dr. Abhay Gangadhar Pagdhare

...Applicant / Ori.  
Respondent

In the matter between  
Mahalaxmi Resorts & Ors.

Appellants

*Versus*

Dr. Abhay Gangadhar Pagdhare

...Respondent

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Mr. Puneet Chaturvedi i/b. Sanjay S. Gawde for the Applicant.

Mr. Ram Apte, Senior Advocate i/b Vinay Bhate for  
Respondents for Applicant in I.A No.2003 of 2020.

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CORAM : K.K. TATED &  
R.I. CHAGLA, JJ.

DATE : 30TH MARCH, 2021

ORDER :

1. Heard learned Counsel for parties.
2. For the sake of convenience nomenclature of the parties will be referred Applicant as Plaintiff and the Appellants as Defendants as described in the Suit.

3. By this Interim Application, the Plaintiff is seeking permission to withdraw the sum of sum of Rs.5,49,04,032.25 (Rs. Five crores forty nine lacs four thousand thirty two and paise twenty five only) deposited by the Defendants before this Court without furnishing any security.

4. Learned Counsel Mr. Chaturvedi for the Plaintiff submits that in the present proceeding the Plaintiff entered in to development agreement dated 13th February, 2001 with the Defendants for development of land area approximately 35,355.84 sq. meter (Thirty five thousand three hundred fifty five point eighty four square meter) of village Mahim, Tal and Dist. Palghar. He further submits that because of dispute between Plaintiff and Defendants and the Defendants failed and neglected to comply the terms and conditions of development agreement, the Plaintiff has filed Special Civil Suit No.73 of 2007 before the Civil Judge, S.D., Palghar for recovery of sum of 6,50,00,000/- (Rs. Six crores fifty lacs only) with interest @ 18% p.a. Following prayers read as under:-

***“(a) The defendant Nos.1 to 4 jointly and severally may be ordered and decreed to pay a sum of Rs.6,50,00,000/- (Rupees Six Crores Fifty Lacs only) with interest becoming due thereon from 13th December, 2006 at the rate***

*of 18% p.a. to the Plaintiff.*

*(b) The property both moveable and immoveable belonging to the defendant Nos.1 to 4 may be ordered to be attached and sold in execution of the said decree;*

*(c) Cost of this suit may be granted;*

*(d) Any other relief which is found just, equitable and necessary under the facts and circumstances may be also granted;*

*(e) Liberty may be granted to amend the Plaint if found necessary.”*

5. Learned Counsel for the Plaintiff submits that the Trial Court after considering the evidence of both parties, passed the judgment and decree dated 27th July, 2016 holding that the Defendant Nos.1 to 4 joint and severally to pay sum of Rs.6,50,00,000/- (Rs. Six Crore Fifty lac) to the plaintiff along with interest @ 6% p.a. from the date of filing of suit till realization of the amount.

6. Learned Counsel for the Plaintiff submits that, Defendants being aggrieved by the judgment and decree dated 27th July, 2016, preferred the First Appeal No.882 of 2017. He submits that the Appeal admitted by this Court on 17th November, 2017. He further submits that in the present First

Appeal the Defendants filed Interim Application No.2477 of 2017 for stay of the operation and implementation of the impugned judgment and decree passed by the Trial Court. He submits that this Court by order dated 28th November, 2017 directed the Defendants to deposit 50% of decretal amount in this Court within eight weeks and provide solvent security to the satisfaction of Registrar (Judicial) of this Court. Operative part of the said order dated 28th November, 2017 reads thus:-

***“1. The execution of decree stands stayed subject to following conditions:-***

***(a) the applicants shall deposit 50% of decretal amount in this Court within 8 weeks.***

***(b) In respect of remaining 50% of the decretal amount the applicants shall furnish solvent security to the satisfaction of Registrar (Judicial) of this Court. Before accepting the solvent security Registrar shall hear the respondents.***

***2. Civil Application stands disposed of. Costs in cause.”***

7. Learned Counsel for the Plaintiff submits that thereafter Defendants had preferred another Civil Application No.211 of 2019 for extension of time to comply earlier order dated 28th November, 2017. He submits that, this Court granted some time. The order dated 16th April, 2019 reads thus:-

*“(i) Time granted to the applicants to deposit 50% of the decretal amount as per the order dated 28th November, 2017 is finally extended by a period of six weeks from today, subject to condition of the applicants depositing 50% of the decretal amount (Rs.6.5 crores plus interest as directed) as on 7th January, 2019. Thus, the amount payable in addition to Rs.3.25 Crores shall be deposited within six weeks from today*

*(ii) On the failure of the applicants to deposit the balance amount as aforesaid within a period of six weeks from today, the impugned decree will immediately become executable;*

*(iii) Only after deposit of the aforesaid amount, the Registrar (Judicial) will examine the documents furnished by the applicants and will ascertain whether the applicants have furnished solvent security for remaining 50% of the decretal amount payable as on 7th January, 2019 to his satisfaction. Before examining the documents, the Registrar (Judicial) will satisfy himself that compliance with the aforesaid directions regarding deposit is made by the applicants. If he is satisfied that the compliance is not made, then there will not be any occasion to accept the solvent security as the stay shall stand automatically vacated;*

*(iv) Before accepting solvent security in terms of the order dated 28th November, 2017 as modified by this order, the Registrar (Judicial) I will give an opportunity of being heard to the respondent. The respondent will be entitled to inspect the documents produced by the applicants; and*

*(v) The applicants shall furnish solvent surety to the satisfaction of the Registrar (Judicial) within a maximum period of 3 months from the date on which the balance amount as aforesaid is deposited by the applicants. If the applicants fail to furnish solvent surety to the satisfaction of the*

*Registrar (Judicial) within the stipulated period of 3 months, the stay shall stand vacated without further reference to the Court, notwithstanding the fact that the Applicants deposit the balance amount within the stipulated time;*

*(vi) The applicants are directed to pay costs quantified at Rs.20,000/- to the respondent within a period of four weeks from the date on which this order is uploaded. Payment of costs will be condition precedent."*

8. Learned Counsel for Plaintiff submits that, as the Defendants failed to comply with the order passed by this Court on stay application i.e. to provide solvent security to the satisfaction of the Registrar (Judicial), they filed Interim Application No.2003 of 2020, with following prayers which is pending for hearing and final disposal in its own merits:-

*"(a) That the order dated 3rd February, 2020 passed by the learned Registrar Judicial - II refusing to accept the security be set aside;*

*(b) that this Hon'ble Court be pleased to direct the learned Registrar Judicial- II to accept the security produced by the Applicants;*

*(c) that the orders dated 28th November, 2017 and 16th April, 2019 passed by this Hon'ble to continue till hearing and final disposal of the abovementioned First Appeal No.882 of 2017;*

*(d) Pending the hearing and final disposal of present Civil Application and the first appeal, this Hon'ble Court be pleased to stay the further proceedings of the Special Darkhast No.10 of 2017*

*pending before learned Civil Judge, Senior Division, Palghar;*

*(e) Ad interim orders in terms of prayer clause (c) and (d) above;*

*(f) Such further and other relief's as this Honourable Court may deem fit and proper in the nature and circumstance of the case;"*

9. Learned Counsel for the Plaintiff submits that the Plaintiff has preferred the present Civil Application for withdrawal of the said amount without furnishing solvent security.

10. Learned Counsel appearing for the Plaintiff submits that there is a money decree against Defendants for the sum of Rs.6,50,00,000/- (Rupees Six crores fifty lakhs only). This Court by order dated 28th November, 2019 in Civil Application No.2477 of 2017 stayed execution of decree subject to deposit 50% of decretal amount in this Court within 8 weeks and for remaining 50% of the decretal amount to furnish solvent security. Defendants failed to comply with the order dated 28th November, 2019, hence they preferred another Interim Application No.211 of 2019 for extension of time. Civil Application No.211 of 2019 allowed by this Court and time

granted to comply with the order dated 28th November, 2019 in Civil Application No.2477 of 2017. As the Defendants failed to comply with the order in time, this Court may permit Plaintiff to withdraw the said amount without furnishing any security. If the said relief is not granted, irreparable loss would be caused to the Plaintiffs.

11. On the other hand, learned Senior Counsel Mr. Apte for Defendants vehemently opposed the present application. He submits that there is no question of permitting the Plaintiff to withdraw the entire amount deposited by them pursuant to the order passed by this Court in the Registry. He submits that in the present proceedings the Defendants already made payment to the Plaintiff as per the development agreement. Not only that, the Plaintiffs is defaulter of several banks as well as Income Tax Department. Learned Senior Counsel for the Defendants submitted that, to that effect the Defendants have made averments in the Affidavit in Reply and particularly in paragraph Nos.9 and 10, which reads thus:-

***“9. The Appellants state that appellants are from Virar which comes under Palghar district and claim of the appliant that it is adivasi area is a false excuse. The Appellants submit that the respondent is making false claim and the Philia***

*Hospital which the respondent is running is not working properly itself as the Hospital was never looked after by the Respondent. The Respondent claims himself as Doctor who is only pediatric Doctor and do not have any experience. It is submitted that as stated in forgoing paragraph the Respondent claims to be sole proprietor of M/s. Agastya Developer. It is submitted that as per rules and regulation of the Medical Council of India no one can practice any other profession along with the medical profession as medical profession is full time profession and it is Nobel profession thus act and deeds on the part of the Respondents amounts to unethical acts and disobedience of the rules of the Medical Council of India. Thus at first instance it is submitted that this Hon'ble Court should direct the Medical Council of India and to conduct enquiry for non professional and unethical behaviour.*

*10. The Appellants submit that whenever any person carried any business or profession, capital for the same has to be brought by them and cannot depend on others to contribute it. The Appellants submit that the Respondent has got money decree and that does not mean that decree is final as the Appeal filed by the appellants has been admitted and the money deposited by the appellants cannot be disbursed for (personal interest of the respondent)."*

12. Learned Senior Counsel for the Defendants submits that, in view of the these facts, there is no question of permitting the Plaintiff to withdraw the amount deposited by them without furnishing any security. He submits that if the Court come to the conclusion that, the Plaintiff is entitled to withdraw the said amount, in that case the Plaintiff must be directed to furnish

the bank guarantee of any nationalized bank for withdrawal of the amount.

13. On the basis of this submission the learned Senior Counsel for Defendants submits that there is no substance in the present Interim Application and same is required to be dismissed.

14. We heard both sides at length. It is to be noted that in the present proceedings the Plaintiff had filed Special Civil Suit No.73 of 2007 before the Civil Judge, S.D. Palghar for recovery of sum of Rs.6,50,00,000/- (Rupees Six Crores fifty lakhs only) with accrued interest @ 18% p.a. In that Suit, the Trial Court has framed following issues:-

| Sr. No. | ISSUES                                                                                                                                                                                          | FINDINGS           |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1       | Does plaintiff prove that defendants agreed to develop the suit property and registered Agreement dated 13/02/2001 was executed?                                                                | In the affirmative |
| 2       | Does he further prove that Defendants committed breach of said agreement and gave the Plaintiff false assurances time to time as alleged?                                                       | In the affirmative |
| 3       | Does he further prove that Defendants offered him to pay initially Rs.1,50,00,000/- and subsequently Rs.5,00,00,000/- as part of consideration, loss and damage due to the delay on their part? | In the affirmative |

|                          |                                                                                                                                                                           |                                                                                                |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| 4                        | Does he further prove that Defendants gave him a letter dated 15th October, 2006 acknowledging their earlier letter dated 12/02/2003 and also a cheque of Rs.20,00,000/-? | In the affirmative                                                                             |
| 5                        | Does he further prove that Defendants further assured him to pay balance amount on or before 12/12/2006?                                                                  | In the affirmative                                                                             |
| 6                        | Does he further prove that the suit is within limitation?                                                                                                                 | In the affirmative.                                                                            |
| 7                        | Do Defendants prove that the agreement dated 13/02/2001 was not a Development Agreement but it was Agreement to sell the suit property as contended?                      | In the negative                                                                                |
| 8                        | Is Plaintiff entitle to recover of Rs.6,50,00,000/- with an interest @18% per annum from the Defendants as claimed?                                                       | In the affirmative and interest @ 6% p.a. from the date of suit till realization of the amount |
| 9                        | What order and decree?                                                                                                                                                    | As per final order.                                                                            |
| <b>ADDITIONAL ISSUES</b> |                                                                                                                                                                           |                                                                                                |
| 1                        | Whether the suit is without any cause of action?                                                                                                                          | In the negative                                                                                |
| 2                        | Whether the present plaint has not complied the mandatory provisions of the Code of Civil Procedure?                                                                      | In the negative                                                                                |

15. The Trial Court has specifically recorded that, the Defendants failed and neglected to comply with the terms and conditions of the development agreement and not only that, the

Plaintiff has made specific averment in paragraph Nos.11 and 12 of the Plaint, how they are entitled to sum of Rs.6,50,00,000/- (Rupees Six crores fifty lakhs only).

Paragraphs 11 and 12 of the Plaint read thus:-

*“11) Number of meetings were held in between the Plaintiff and defendant during the period from 2001 to 2003 with a view to sort out the difficulties and find out the solution to enable the defendants to start and complete the infrastructural development. In accordance with that the defendants thereupon by a letter dated 12th February, 2003 gave a proposal to the Plaintiff to give them the bungalows bearing Nos.F7 and F12 retained by the Plaintiff with himself and release them for disposal. The defendant wanted to raise the necessary funds for the infrastructural development by necessary funds for the infrastructural development by disposing off the said bungalows. They further offered the Plaintiff by the said letter that they will not claim any right, title or interest in the said bungalows even if they fail, refuse, neglect or avoid to dispose off the above mentioned bungalows till 31/08/2006. They further offered to pay a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty lac only) to the Plaintiff in addition to the consideration agreed under the Development Agreement dated 13th February, 2001 on the disposal of the said bungalows.*

*12. The defendant by the said letter dated 12th February, 2003 had further interalia, offered to pay a sum of Rs.5,00,00,000/- (Rupees Five Crore only) towards the part of consideration and loss and damage caused to the Plaintiff on account of the delayed*

*development. The defendants also by the said letter accepted and confirmed to have received the Title Clearance Certificate and that the same to be clear and marketable.”*

16. It is to be noted that in any case today there is a money decree against Defendants and Defendants have deposited only 50% of decretal amount as per order passed by this Court. The First Appeal may take its own time to decide the same on its own merits. Considering this fact, we are of the opinion that the Plaintiff has made out the case for allowing this Interim Application. Hence the following order:-

a) The Plaintiff is permitted to withdraw the sum of Rs.5,49,04,032.25 (Rupees Five crores forty nine lakhs four thousand thirty two and paise twenty five only) along with accrued interest, if any, deposited by the Defendants in the Registry of this Court, i.e. 50% of the decretal amount, without any security but subject to outcome of the First Appeal.

b) Interim Application is allowed, accordingly.

c) No order as to costs.

d) Parties to act upon an authenticated copy of this Order.

e) At this stage, the learned Senior Counsel for the

Defendants seeks to stay the present order for some time. Considering the submissions made by the learned Senior Counsel for the Defendant, and as there is money decree and not only that, the Defendant has deposited only 50% amount of the money decree without furnishing any security for remaining 50% amount, as per the order passed by this Court, the request of the learned Senior Counsel is rejected.

**[R.I. CHAGLA J.]**

**[K.K. TATED, J.]**