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

WRIT PETITION NO. 10427 OF 2019

Runwal Developers Pvt. Ltd. and anr. .. Petitioners
vs.

M/s. Viva Infrastructure and ors. .. Respondents

Mr. Abhishek Salian i/b Vidhii Partners, for Petitioners.

Mr. R.S. Apte, Senior Advocate i/b Mr. Aniruddha A. Garge, for the
Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : DECEMBER 8, 2021

P.C.:-

1. Heard learned Counsel for the petitioners and learned Senior Advocate for the respondent no.1. The order challenged is dated 28/08/2019 passed by Adhoc Judge, City Civil Court, Gr. Bombay granting conditional leave to defend the Suit to the petitioner - defendant on depositing amount of Rs. 25,00,000/- jointly in the Court within four weeks from the date of the order.

2. Briefly stated it is the case of the plaintiff that there are four flats towards which the plaintiff paid Rs. 4,70,00,000/- . The transaction did not materialise. The defendant refunded the

amount of Rs. 4,44,57,477/- to the plaintiff. The balance amount due is Rs. 25,42,523/- with consequential interest. For the reasons mentioned in the impugned order, the trial Court was of the opinion that the conditional leave to defend the Suit should be granted on depositing amount of Rs. 25,00,000/-. In paragraph 7, the trial Court observed thus :

7. Defendants have not disputed that as per allotment letter dated 22.10.2010, the plaintiff Company has paid an amount of Rs. 4,00,00,000/- to defendant No.1. According to defendants in the demand letter dated 01.06.2016, plaintiff Company admitted that they have paid only Rs. 4,00,00,000/- to defendant No.1. In the notice dated 22.07.2016 also the plaintiff Company reiterated that they have paid Rs. 4,00,00,000/- to defendant No.1. In this respect, the reply of defendants specifically reflects that plaintiff Company has received Rs. 4,44,57,477/- from defendant No.1. It is quite unreasonable that when defendants have received Rs. 4,00,00,000/- from plaintiff Company, why they have paid excess amount of Rs. 44,57,477/- to plaintiff Company. Therefore, defence of the defendants appears to be not substantial and thus, they are entitled for conditional leave to defend the suit."

3. While issuing notice upon the respondents of this Petition on 26/09/2019, this Court had granted ad-interim relief in terms of prayer clauses (b) & (c) subject to the petitioner depositing a sum of Rs. 12,50,000/- before the trial Court within a period of three weeks from the date of the order. Learned Counsel for the petitioner submits that in compliance with the

order passed by this Court, amount of Rs. 12,50,000/- is already deposited. Learned Counsel for the petitioner submitted that he has no objection if the amount so deposited remains invested till the disposal of the Suit. He raised the challenge to the order of the trial Court on various grounds mentioned in the Petition. Shri Apte, learned Senior Advocate appearing for respondent no.1 - original plaintiff argued in support of the impugned order. In his submission, for the reasons recorded by the trial Court, interference is not warranted in exercise of writ jurisdiction as the order has been passed after considering the materials before the trial Court at the relevant stage.

4. Be that as it may, in my opinion, having regard to the facts and circumstances of the present case and as the petitioner has deposited an amount of Rs. 12,50,000/- in the trial Court and further indicated that the said amount can remain invested till the disposal of the Suit, in my opinion, the petition can be disposed of by directing the trial Court to decide the Suit itself expeditiously considering the summary nature of the Suit. The order passed by the trial Court is suitably modified by granting conditional leave to defendant to defend the Suit on depositing Rs. 12,50,000/-. The amount of Rs. 12,50,000/- which is deposited in the trial Court be invested in the fixed deposit in any

nationalised bank till the decision of the Suit. The said deposit and the interest on it shall abide by the order of the trial Court. Subject to the modification, I see no reason to interfere with the order of the trial Court.

5. The parties to co-operate with the trial Court and will not seek unnecessary adjournments. The defendant to file written statement within a period of 6 weeks from today.

6. Writ Petition is disposed of.

(M.S. KARNIK, J.)